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N. 2473
No. 11638

Serial 2474
United States

Circuit Court of Appeals

For the Ninth Circuit

LOCAL 36 OF THE INTERNATIONAL FISHERMEN AND
ALLIED WORKERS OF AMERICA, JEFF KIBRE,
GILBERT ZAFRAN, CLIFFORD C. KENNISON, F. R.
SMITH, GEORGE KNOWLTON, OTIS W. SAWYER,
W. B. McCOMAS, HARRY A. McKITTRICK, ARTHUR
D. HILL, C. LLOYD MUNSON, CHARLES McLAUCH-
LAN, ROBERT M. PHELPS, BURT D. LACKYARD,
and RAY J. MORKOWSKI,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Six Volumes

VOLUME I

Pages 1 to 462

Upon Appeal from the District Court of the United States
for the Southern District of California
Central Division

FILED
DEC 11 1947

PAUL P. O'BRIEN

No. 11638

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Circuit Court of Appeals

For the Ninth Circuit

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* Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States for
the Southern District of California, Central
Division. February 1946 Term.

Cr. No. 18842

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LOCAL 36 OF THE INTERNATIONAL FISH-
ERMEN & ALLIED WORKERS OF AMER-
ICA, JEFF KIBRE, GILBERT ZAFRAN,
CLIFFORD C. KENNISON, F. R. SMITH,
GEORGE KNOWLTON, OTIS W. SAW-
YER, W. B. McCOMAS, HARRY A. Mc-
KITTRICK, ARTHUR D. HILL, C. LLOYD
MUNSON, CHARLES McLAUCHLAN,
ROBERT M. PHELPS, BURT D. LACK-
YARD, FLOYD SHERMAN, RAY J. MOR-
KOWSKI,

Defendants.

INDICTMENT

United States of America,
Southern District of California,
Central Division—ss.

The Grand Jurors of the United States of Amer-
ica, duly impaneled, sworn and charged in the
District Court of the United States for the Central
Division of the Southern District of California, at
the February 1946 Term of said Court, and in-

quiring within and for said Division and District, at the said term of said Court, do upon their oaths present as follows, to wit: [2]

Period of Time Covered by the Indictment

1. Each of the allegations contained in this Indictment, unless otherwise specified, shall be deemed to refer to the period of time beginning on or about May 1, 1946, the exact date being to the Grand Jurors unknown, and continuing thereafter up to and including the date of the filing of this Indictment.

2. Each allegation hereinafter made in this Indictment that an act has been done by any of the defendants herein, or by any other person, shall be deemed to be an allegation that, and it is hereby alleged that, such act was performed within three years next preceding the date of the presentation of this Indictment, unless otherwise expressly stated.

Definition of Terms

3. The term "fishing area" as used in this Indictment refers to the waters of the Pacific Ocean, both territorial and foreign, off the coast of California, in the area from Morro Bay off the Southern California coast to and including the territorial waters of the West Coast of Mexico.

4. The term "fishing ports" as used in this Indictment refers to Southern California ports located between Morro Bay and the Mexican border, including, but not limited to, Morro Bay, Santa Barbara, Santa Monica, Redondo Beach, San

Pedro, Newport Beach, and San Diego, to which ports fish caught in the fishing area are brought by fishermen for sale to dealers.

5. The term "fishermen" as used in this Indictment refers to an individual or group of individuals who own, lease or operate a particular boat for the purpose of engaging on their own account in the business of catching fresh fish and crustaceans in the fishing area, and bringing them to fishing ports for the purpose of sale to dealers.

6. The term "dealers" as used in this Indictment, unless otherwise indicated, refers to those companies and individuals located at [3] fishing ports who are engaged in the business of purchasing fresh fish and crustaceans from fishermen and other dealers and selling such fish to wholesalers and retailers.

The Defendants

7. Defendant Local 36 of the International Fishermen and Allied Workers of America (sometimes referred to as Local 36, IFAWA) is hereby indicted and made a defendant herein. Local 36 IFAWA is an unincorporated association affiliated with the Congress of Industrial Organizations, and has its headquarters and general offices at San Pedro, California. The membership of Local 36, IFAWA consists in part of fishermen as herein defined. Approximately 75% of all fishermen in the fishing area defined herein are members of defendant Local 36, IFAWA.

8. The following named natural persons, hereinafter referred to as the "individual defendants," are hereby indicted and made defendants herein:

Name	Position or Association with Local 36, IFAWA	Residence or Place of Business in California
Jeff Kibre	International Representative, IFAWA	San Francisco
Gilbert Zafran	Secretary-Treasurer	San Pedro
Clifford C. Kennison	Assistant Business Agent	San Pedro
F. R. Smith	Fisherman & Chairman of Strike Committee	San Pedro
George Knowlton	Fisherman & Member of Strike Committee	San Pedro
Otis W. Sawyer	Fisherman & Picket Captain	San Pedro
W. B. McComas	Fisherman & President of Santa Monica Unit	Santa Monica
Harry A. McKittrick	Secretary, Santa Monica Unit	Santa Monica
Arthur D. Hill	Fisherman & President, Newport Beach Unit	Newport Beach
C. Lloyd Munson	Secretary, Newport Beach Unit	Newport Beach
Charles McLauchlan	Business Agent, Newport Beach Unit	Newport Beach
Robert M. Phelps	Fisherman & Member of Negotiating Committee	Newport Beach
Burt D. Lackyard	Fisherman & Member of Negotiating Committee and Strike Picket Captain.	Newport Beach
Floyd Sherman	Fisherman & President, San Diego Unit	San Diego
Ray J. Morkowski	Business Agent, San Diego Unit	San Diego

Each of said individual defendants resides or has a place of business at the respective address as indicated above, and during the period of time

covered by this Indictment, has been and is a member of, associated with or employed by, Local 36, IFAWA, in the capacity as shown above, and has been and now is actively concerned with and participates in the management, direction, and control of the policies and activities of Local 36, IFAWA, and has authorized, ordered, or participated in the activities constituting the offense alleged in this Indictment, and when so indicated above are fishermen, as herein defined.

9. Whenever in this Indictment initials are used to describe and identify any defendant, the Christian or given name of such defendant is to the Grand Jurors unknown.

Nature of Trade and Commerce Involved

10. For many years prior to and including the date of the filing of this Indictment, various species of fresh fish, including but not limited to, barracuda, halibut, mackerel, sardines, rockfish, sea bass, tuna, whitefish, yellowtail and crustaceans have been caught by fishermen in the fishing area, brought into the fishing ports of Morro Bay, Santa Barbara, Santa Monica, Redondo Beach, San Pedro, Newport Beach, and San Diego, and sold to dealers therein. The fresh fish so purchased by said dealers are [5] unloaded at dealers' wharves located in the aforesaid ports, where they are thereafter cleaned, dressed, iced, or otherwise processed, by the dealers for sale or shipment, and by said dealers sold and shipped to wholesalers or retailers located in California and other States of the United

States. Approximately 20,000,000 pounds of fresh fish and crustaceans, with a retail market value in excess of \$9,000,000, are caught annually in the fishing area and sold to dealers located at the aforesaid ports. In addition to the fish caught and sold to the dealers by the fishermen, in excess of 1,000,000 pounds of fresh fish are shipped annually by dealers and fish brokers from the States of Oregon and Washington to dealers located in the fishing ports herein described.

11. The fishermen who are members of Local 36, IFAWA are not employees, workers, or laborers who receive a salary or wage for their work or labor, but are independent businessmen engaged in business on their own account, and who operate fishing boats for their own account and profit. No employer-employee relationship exists between these fishermen and the dealers to whom their catch is sold. The fishermen members of Local 36, IFAWA, sell their catch directly to dealers, and do not act collectively through Local 36, IFAWA, in catching, producing, preparing for marketing, processing, and handling their catch. Except for the illegal restraints described hereinafter, a much greater volume of fresh fish and crustaceans would have been brought to the fishing ports named herein and sold, processed and distributed from these ports in interstate commerce.

The Conspiracy

12. Beginning some time prior to May 1946, the exact date being unknown to the Grand Jurors, and

continuing thereafter up to and including the date of the return of this Indictment, the defendants named herein, together with other persons to the Grand Jury unknown, have knowingly and continuously engaged in a wrongful [6] and unlawful combination and conspiracy formed and carried out in part within the Southern District of California, Central Division, to fix, determine, establish, and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans, which combination and conspiracy has been in restraint of the aforesaid trade and commerce, in violation of Section 1 of the Act of Congress of July 2, 1890, as amended (26 Stat. 209, 15 U.S.C., Section 1), commonly known as the Sherman Act.

13. The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action among the defendants, the substantial terms of which have been that defendants

(a) agree to fix minimum prices to be charged by the fishermen for the sale of fresh fish and crustaceans caught by said fishermen in the fishing area and thereafter sold by the fishermen to dealers;

(b) agree that with respect to all types of fresh fish and crustaceans for which a price is set by the Office of Price Administration the maximum price

set by the OPA shall be the minimum price to be paid to fishermen by the dealers;

(c) agree that when ceiling prices set by the Office of Price Administration for fresh fish and crustaceans caught by fishermen are removed, that the maximum prices theretofore fixed by the Office of Price Administration shall be and remain the minimum prices at which a fisherman shall sell fish caught by him to dealers;

(d) agree that when the Office of Price Administration has not fixed a ceiling price for fish and crustaceans caught by fishermen, Local 36, IFAWA shall agree with the [7] dealers on the price to be paid the individual fishermen who are members of said Local 36, IFAWA;

(e) agree that the prices of fish sold by the fishermen members of Local 36, IFAWA shall be stabilized and non-competitive;

(f) agree to reduce the foregoing agreement and understanding described in Paragraph 13, (a) to (e) inclusive, to written contract form, and to impose said contract upon fish dealers who refuse to sign the same by picketing and boycott methods, and to prefer fish dealers who sign said written contract, and to refuse to sell or deliver any fish caught by fishermen members of Local 36, IFAWA to fish dealers who do not enter into said contract;

(g) agree to prevent fish dealers who do not enter into said agreement and contract from securing any supply of fresh fish or crustaceans from any other fishermen or other source by boycotting

and establishing picket lines around the places of business of such dealers;

(h) agree to prevent fish dealers who do not enter into the aforesaid agreement and contract from shipping or otherwise transporting any fish purchased or acquired by said dealers;

(i) agree to boycott and picket any concern or individual accepting from dealers who do not enter into said written contract, any fresh fish or crustaceans for shipment from said fishing ports to points in or outside the State of California.

(j) agree to boycott and picket any concern or individual delivering or attempting to deliver to the usual place of business of non-signing dealers, any fresh fish or crustaceans shipped to the usual place of business of [8] such non-signing dealers by brokers or other dealers located in and outside the State of California.

(k) agree to prevent fishermen who are not members of Local 36, IFAWA, from fishing and delivering any fresh fish or crustaceans caught by said fishermen to anyone other than a dealer signing the aforesaid written contract and only to such dealer after said non-member fishermen had picketed non-signing dealers, or in lieu thereof, had paid to Local 36, IFAWA a stipulated picket fee.

14. During the period of time covered by this Indictment, and for the purpose of forming and effectuating the aforesaid conspiracy and combination, the defendants, by agreement and concerted

action, have done the things which, as hereinbefore alleged, they conspired to do, and more particularly, have submitted to all dealers in and around the fishing ports herein described, the contract form Exhibit A, attached hereto and made a part hereof. Defendants, for the purpose of forcing and coercing fish dealers into signing the aforesaid form of contract, threatened to withhold and have withheld from said dealers, supplies of fresh fish and crustaceans, and by boycott and picketing methods have attempted to prevent and have prevented said dealers who refused to sign said form of contract from securing fresh fish or crustaceans from any other source.

Effects of the Conspiracy

15. The aforesaid agreement and concerted action of the defendants pursuant to and in furtherance of the conspiracy herein alleged has had the effect, as intended by the defendants, of preventing fishermen in the fishing area from carrying on their normal fishing operations and of preventing fish from being sold or brought into the fishing ports herein described for sale to fish dealers located therein who have refused to sign and enter [9] into the form of contract hereinbefore referred to; has further resulted in the fixing of arbitrary and non-competitive prices for the fish sold by the fishermen members of Local 36, IFAWA to dealers who have signed said form of contract; has prevented the public in the Western States of California, New Mexico, Arizona, Nevada, Colorado,

Utah and Idaho from receiving a normal and usual supply of fresh fish and crustaceans; and has unreasonably restrained the interstate and foreign trade and commerce described in this Indictment, in violation of Section 1 of the Sherman Act.

Jurisdiction and Venue

16. The conspiracy herein alleged has been entered into and carried out in part in the Southern District of California, Central Division, where some of the defendants reside or transact business. During the period of such conspiracy, and within three years next preceding the presentation of this Indictment, the defendants have performed, within the Southern District of California, Central Division, many of the acts set forth in Paragraph 13 hereof. More particularly, on or about May 27, 1946, the exact date being to the Grand Jury unknown, defendant Local 36, IFAWA notified the dealers that unless the form of contract attached hereto as Exhibit A was signed by the dealers by May 28, 1946, no fish of any kind would be brought into the Port of San Pedro starting 7:00 a.m., Wednesday, May 29, 1946; on and after May 29, 1946, said Local 36, IFAWA picketed and caused to be picketed the places of business of fish dealers located particularly in the Ports of San Pedro and Newport Beach, California, who refused to sign said form contract attached hereto as Exhibit A, and have prevented said fish dealers from obtaining their normal supply of fresh fish and crustaceans from any other source; and Local 36, IFAWA noti-

fied the Railway Express Agency, [10] Inc., that said Company would be picketed by the members of Local 36, IFAWA if said Railway Express Agency, Inc. accepted any fish from any San Pedro dealer for shipment to destination points in or outside the State of California where such dealer had not signed a contract with Local 36, IFAWA which contained the provisions set forth in the form of contract attached hereto as Exhibit A.

And so the Grand Jurors aforesaid, upon their oaths, do present that the defendants named herein, throughout the period herein mentioned, at the places and in the manner herein described, unlawfully and intentionally have engaged in a continuing conspiracy to restrain unreasonably the aforesaid trade and commerce, as described in this Indictment.

Dated August 23, 1946.

A True Bill:

/s/ CLYDE R. BURDICK,
Foreman, Grand Jury.

/s/ WILLIAM C. DIXON,
Special Assistant to the
Attorney General.

/s/ ROBERT J. RUBIN,
Special Attorney.

/s/ HARRY B. SWERDLOW,
Special Attorney.

/s/ BENJAMIN F. SCHWARTZ,
Special Attorney.

/s/ WENDELL BERGE,
Assistant Attorney General.

/s/ HOLMES BALDRIDGE,
Special Assistant to the
Attorney General.

/s/ JAMES M. CARTER,
United States Attorney,
Southern District of
California. [11]

EXHIBIT A

Southern California

Market Fishermen's Master Agreement

This Agreement made and entered into thisday of....., 1946, by and between the International Fishermen and Allied Workers of America and those locals signatory hereto, hereinafter designated as the Union, and the undersigned association, fish dealer, or company signatory hereto, hereinafter designated as the company.

Witnesseth That:

Whereas, the said union is an association of fishermen engaged in the fishing industry limiting their activities to collectively catching and marketing, through said association, the products of their catch; and

Whereas, it is one of the purposes of this agreement to, so far as is practicable, regulate the fishing contemplated by this agreement, to the end that at all times there will be sufficient fish production; and

Whereas, it is also the intention of this agreement, through cooperation between said union, or association, and the fish dealers in this area, to eliminate, so far as possible, and tend to reduce any unnecessary production or over-production of fish; and

Whereas, it is the desire and intention of the parties hereto to provide an adequate outlet for the fishing catch; and

Whereas, as a means of accomplishing those objectives, the parties hereto recognize that there must be, so far as possible, regulations of the catching and marketing of fish;

Now, Therefore, in view of the mutual obligations undertaken herein, it is agreed as follows:

1) To effectuate the purposes of this agreement, the said dealers agree to assist said union, and the members thereof, in the marketing and distribution of their catches of fish.

2) That the parties hereto do agree to forthwith set up a functioning food production and distribution committee, the duties and functions of which committee being to further and implement the purposes and spirit of this agreement and to work in concert with Government agencies to the end that maximum production of fish of all kinds [12] may be produced that such production of fish will be properly and efficiently distributed; that prices will be maintained in consonance with the policies of the National Administration to combat inflation

through stabilized prices; and to acquaint the general public with the many ways that fish can be appetizingly used.

3) In order fully to effectuate the purpose of the Memorandum and to further stabilize the distribution and price of fish, it is agreed that this agreement shall be in force between the Union and fish dealers in the territory between Morro Bay, California, and the Mexican Border. It is further agreed by the Union that negotiations with all fish dealers in and about the matters covered by this contract will be concluded by June 1, 1946, and that thereafter all fish dealers in said territory who have signed this Memorandum will be given equal and first preference in the purchase of all fish caught by the members of the Union.

4-A) It is further agreed by and between the parties hereto that with respect to all types of fish and crustaceans, for which a price is set by the Office of Price Administration, that the maximum price set by the O.P.A. shall be the minimum price to be paid to the fishermen for said fish.

B) That with respect to all fish or crustaceans, the price of which has not been the subject of O.P.A. regulations, that the parties hereto will from time to time negotiate and agree on the price thereof and that, when prices are agreed upon as contemplated herein, said prices will be reduced to a Memorandum and attached to this Agreement.

C) With respect to all prices mentioned herein which may presently be the subject of an O.P.A.

ruling, it is agreed that if and when ceiling prices are removed through the O.P.A., the maximum prices then in effect according to O.P.A. schedules shall become and remain the minimum prices under the terms of this agreement.

D) It is further agreed between the parties that all of the prices mentioned herein may be subject to renegotiation by either party hereto upon twenty-four (24) hours' notice in writing delivered by one to the other, which said notice shall set forth the species of fish or crustaceans to prices of which shall be subject to such renegotiation, and the prices to be procured through such renegotiation [13] and the reasons for such proposed change in price. It is further agreed that during such period of twenty-four (24) hours the buyers will accept fish from the sellers according to the usual custom in the business and the twenty-four (24) hour period shall be extended to include the catches of all boats not notified of such renegotiation notice then in the fishing grounds and until they return to port.

5) The Union shall have the right to furnish a fish weigher of its own choosing, and any member of the Union shall be allowed to inspect the weighing apparatus at any time.

6) The Company shall make payment for fish to the members of the Union regularly each week.

7) It is distinctly understood and agreed that the Union assumes no liability of any kind under the terms of this agreement, but is acting merely as a bargaining agency for its members.

8) Both of the parties hereto recognize that any acts on the part of either of the parties hereto which might result in a stoppage of production, or marketing of fish, affecting either the fishermen or the dealers, is not desired by either of the parties hereto; and it is, therefore, the purpose of this clause to provide a means and method by which any and all disputes arising between the parties shall be resolved through arbitrations rather than unilateral action on the part of either party hereto.

To that end, the parties hereto do agree as follows:

A) That, in event any dispute affecting the catching and selling and price of fish arises between the parties hereto, operations under this contract will not be interrupted or curtailed. That said dispute shall, within twenty-four (24) hours, be referred to a Board of three and three set up by the fishermen and dealers with one neutral person as chairman named and agreed to by both parties.

B) That such dispute shall be reduced to writing by both parties hereto and agreed upon in context if possible; and shall then be immediately referred to said Board, with a hearing to be held at the earliest time convenient to said Board, who shall decide said dispute and render a decision within thirty-six (36) hours after the dispute has been heard.

C) That the decision of said Board shall be final and binding [14] upon both of the parties hereto,

and shall be retroactive in effect to the date of said dispute, unless the parties hereto affirmatively waive the retroactive effect of the decision.

D) That the fees of such Chairman shall be borne equally by the parties hereto.

E) That any decision relating to price may be subject to review by the Board, at the request of either party, within seven days.

9) This agreement shall continue in full force and effect from year to year beginning as of this date until and unless notice in writing is given to one party by the other at least thirty (30) days prior to April 1st of each year of its intention to either terminate said agreement or to alter, amend, or modify, said agreement or parts thereof. Notice of intention to alter, amend or modify shall not have the effect of terminating the agreement but shall permit each party to renegotiate the particular portion of said agreement which is to be the subject of such alteration, modification, or amendment or additions hereto. Such contemplated alterations, modifications, amendments or additions hereto shall be generally set forth in the said notice. Such written notice shall be by registered mail, with return receipt, and such receipt shall be proof of the sending of the notice herein contemplated.

10) This agreement shall be binding upon and enure to the benefit of the successors or assignees of the parties hereto.

In Witness Whereof, the parties hereto through their respective officers have made and executed this agreement the day and year mentioned above.

(Company)

INTERNATIONAL FISHER-
MEN & ALLIED WORKERS
OF AMERICA,

By -----
International Representative.

By -----
Local 36, Secretary-
Treasurer.

By -----
Local 36, Morro Bay Unit.

By -----
Local 36, Santa Barbara Unit.

By -----
Local 36, Santa Monica Unit.

By -----
Local 36, Redondo Unit.

By -----
Local 36, San Pedro Unit.

By -----
Local 36, Newport Beach
Unit.

By -----
Local 36, San Diego Unit.

[Endorsed]: Filed Aug. 25, 1946. [16]

[Title of District Court and Cause.]

MOTION BY DEFENDANTS TO
DISMISS THE INDICTMENT

The defendants, Local 36 of the International Fishermen & Allied Workers of America, Jeff Kibre, Gilbert Zafran, Clifford C. Kennison, F. R. Smith, George Knowlton, Otis W. Sawyer, W. B. McComas, Harry A. McKittrick, Arthur D. Hill, C. Lloyd Munson, Charles McLauchlan, Robert M. Phelps, Burt D. Lackyard, and Ray J. Morkowski, and each of them, move that the indictment herein be dismissed on the following grounds:

1. The indictment does not state facts sufficient to constitute an offense against the United States on the parts of [17] the defendants, or any of them.

2. The activities of the defendants, and each of them, as set forth in the indictment are exempt from the provisions of the Anti-Trust Law by reason of the statutes authorizing fishermen marketing agencies. 48 Stat. 1213, 15 USCA 521, 522.

3. The activities of the defendants, and each of them, are exempt from the provisions of the Anti-Trust Law by reason of the statutes providing that the labor of a human being is not a commodity or

article of commerce, and that the Anti-Trust Laws are not applicable to labor organizations. 38 Stat. 731, 15 USCA 17.

GLADSTEIN, ANDERSEN,
RESNER, SAWYER &
EDISES,

By GEORGE ANDERSEN,
BARTLEY CRUM,
KATZ, GALLAGHER &
MARGOLIS,

By /s/ BEN MARGOLIS,
Attorneys for Defendants.

Received copy of the within Notice of Dismissal this 23 day of Sept., 1946.

/s/ WM. C. DIXON,
Attorney for Plaintiff.

[Endorsed]: Filed Sept. 23, 1946. [19]

At a stated term, to wit: The September Term, A. D. 1946, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 14th day of October in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Peirson M. Hall,
District Judge.

[Title of Cause.]

This cause coming on for hearing on (1) defendant Lloyd Sherman's motion to strike and for a Bill of Particulars, pursuant to notice filed September 20, 1946; (2) hearing on motion of defendants to dismiss the indictment, pursuant to notice thereof, filed September 23, 1946; (3) hearing on motion of defendants for a more definite statement and for a Bill of Particulars, pursuant to notice thereof filed September 23, 1946; and (4) hearing on motion of plaintiff to strike from files affidavit of Jeff Kibre, pursuant to notice filed October 3, 1946; Wm. C. Dixon, Esq., Special Asst. to the Attorney General, appearing for the Government, and Robert J. Rubin, Esq., Special Attorney, Anti-Trust-Trust Division, appearing for the Government; Arthur Garrett and John L. Harris, Esqs., appearing for the defendant Sherman; Ben Margolis, Esq., appearing for defendants Local 36, et al.;

On motion of Attorney Harris, it is ordered that Arthur Garrett, Esq., be, and he hereby is, associated as counsel for the defendant Sherman.

On motion of Attorney Margolis, and counsel for the Government not objecting, each defendant, including Local 36, waives the reading of the indictment and enters a separate plea of not guilty, plea of Local 36 being entered by Gilbert Zafran, Secretary-Treasurer, who is so authorized, and on the Court's order a resolution of said authorization will be filed. [20]

Attorney Garrett argues in support of motion of defendant Sherman to strike and for a Bill of

Particulars. Attorney Dixon argues in support of plaintiff's motion to strike the affidavit of Jeff Kibre.

Attorney Margolis argues in support of motion to dismiss and in opposition to motion of plaintiff to strike the affidavit of Jeff Kibre.

It is ordered that further hearing herein be continued to October 18, 1946, at 10 a.m. [21]

At a stated term, to wit: The September Term. A. D. 1946, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 12th day of November in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Peirson M. Hall,
District Judge.

[Title of Cause.]

This cause coming on for further hearing on (1) motion of defendant Lloyd Sherman to strike and for a Bill of Particulars, pursuant to notice thereof filed September 20, 1946; (2) motion of defendants to dismiss indictment, pursuant to notice thereof filed September 23, 1946; (3) motion of defendants for a more definite statement and for a Bill of Particulars, pursuant to notice filed September 23, 1946; Robert J. Rubin, Special Attorney, Anti-Trust Division, Dept. of Justice, appearing as

counsel for the Government; Arthur Garrett, Esq., appearing as counsel for Defendant Sherman; Messrs Katz, Margolis and Gallagher by Ben Margolis, Esq., appearing as counsel for Local 36, et al., the Court denies all three motions and orders memorandum filed and entered, and that the cause be, and it hereby is, set for trial on February 18, 1947, at 10 a.m. [22]

[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS THE IN-
DICTMENT AND OF CHALLENGE TO
AND MOTION TO STRIKE OUT THE
ENTIRE TRIAL JURY PANEL

To The Above Named Plaintiff and To Its Counsel
of Record:

You and Each of You will please take notice that on February 18, 1947, at 10 o'clock a.m., before the Honorable Peirson M. Hall, Judge of the above entitled court, at his courtroom in the United States Post Office and Court House, in the City of Los Angeles, County of Los Angeles, State of California, when the above entitled matter comes on for trial, the defendant above named and each of them will move the Court as follows:

1. That the Indictment herein be dismissed on the grounds that the Grand Jury which returned said Indictment was improperly [23] selected and that there were material departures from the form prescribed by law in the matter of the drawing

and selection of the said Grand Jury, in that the said Grand Jury was drawn in such a manner that it was not an impartial Grand Jury drawn from a cross section of the community, but that certain defined groups of the community, to-wit: laborers, people working by the day or hour, members of labor unions and Negroes were systematically and intentionally discriminated against and were excluded from the list of persons to serve as grand jurors on the said Grand Jury, although they were qualified to act as grand jurors. Defendants, and each of them, fall within the classes of persons so systematically and intentionally excluded from the list of persons selected to serve on the said Grand Jury and so discriminated against.

The exclusion and discrimination as aforesaid and the selection of the Grand Jury in the manner set forth above deprives defendants, and each of them, of their right to an impartial Grand Jury drawn from a cross section of the community, without exclusion, systematic or intentional, or otherwise, of any groups in any stratum of society, and without discrimination or class distinction and particularly without such exclusion and discrimination as against groups and classes of persons to which the defendants belong.

2. That the trial jury panel herein be quashed and stricken out in its entirety on the grounds that it was improperly selected and that there were material departures from the forms prescribed by law in respect to the drawing and selection of said

jury panel in that said jury panel was drawn in such a manner that it was not an impartial jury panel drawn from a cross section of the community, but that certain defined groups of the community, to-wit: laborers, people working by the day or hour, members of labor unions and Negroes were systematically and intentionally discriminated against and were excluded from the list of persons to serve as trial jurors on the trial jury, although they were [24] qualified to act as trial jurors. Defendants and each of them fall within the classes of persons so systematically and intentionally excluded from the list of persons selected to serve on the said trial jury and so discriminated against. The exclusion and discrimination as aforesaid and the selection of the trial jury panel in the manner set forth above deprives defendants and each of them of their right to an impartial trial jury drawn from a cross section of the community, without exclusion, systematic or intentional, or otherwise, of any groups in any stratum of society, and without discrimination or class distinction and particularly without such exclusion and discrimination as against groups and classes of persons to which the defendants belong.

Said motions will be based on all of the records, papers and files in this proceeding, the records of the jury commissioner, the affidavit of Ben Margolis filed herewith, upon evidence to be presented at the time of the of the hearing of said motions, and upon

the law governing and appertaining to the selection of grand and petit jurors.

Dated: February 11, 1947.

KATZ, GALLAGHER & MARGOLIS,
GLADSTEIN, ANDERSEN, RESNER,
SAWYER & EDISES, and
ROBERT W. KENNY,

By /s/ BEN MARGOLIS,
Attorneys for Defendants. [25]

Received copy of the within Notice of Motion to Dismiss this 11th day of Feb., 1947.

/s/ WM. C. DIXON,
Attorney for Plaintiff.

[Endorsed]: Filed Feb. 11, 1947. [26]

At a stated term, to wit: The February Term, A.D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday, the 12th day of March, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Peirson M. Hall,
District Judge

[Title of Cause.]

This cause coming on for hearing decision on motion of the defendants to dismiss the Indictment

and of challenge to, and motion to strike out the entire trial jury panel, pursuant to notice thereof filed Feb. 11, 1947; H. V. Calverley, Assistant U. S. Attorney; Wm. C. Dixon and Robert J. Rubin, Esqs., Special Assistants to the Attorney General, and Benj. F. Schwartz and Jesse R. O'Malley, Esqs., Special Attorneys, appearing in behalf of the plaintiff; Messrs. Katz, Gallagher, and Margolis, by Ben Margolis, Esq., and Messrs. Gladstein, Andersen, Resner, Sawyer, and Edises, by Robert W. Kenney, Esq., appearing in behalf of all the defendants herein except Defendant Sherman, for whom Arthur Garrett, Esq., is present as attorney; and all the defendants, viz. Kibre, Zafran, Kennison, Smith, Knowlton, McComas, McKittrick, Hill, Munson, McLaughlan, Phelps, Lackyard, Sherman, and Morkowski, except Defendant Sawyer, being present; and counsel stipulating that all of the said defendants are present, the Court orders that defendants' motions to dismiss the Indictment and to strike out the entire jury panel are denied, and the Court reads its opinion into the record.

Attorney Dixon moves the Court for a postponement of the trial until Defendant Sawyer is present, the said defendant being brought here from outside of the continental limits of the United States, and that the trial proceed next Tuesday, March 18, 1947. [27]

At 11:20 a.m. court recesses. At 11:30 a.m. court reconvenes and all being present as before, Attorney Margolis states that the defendants prefer to go ahead with the trial and objects to a continuance.

The Court now orders this cause continued to 10 a.m., March 17, 1947, for trial. On motion of Attorney Dixon it is ordered that the bond of Defendant Sawyer is hereby fixed in the sum of \$10,000, and that fine of \$10 heretofore imposed upon Defendant Lackyard for contempt of Court be remitted.

At a stated term, to wit: The February Term, A.D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday, the 9th day of April, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Peirson M. Hall,
District Judge.

[Title of Cause.]

This cause coming on for hearing on motion of defendant Sherman for a judgment of acquittal; William C. Dixon and Robert J. Rubin, Spec. Assistants to the Attorney General, appearing as counsel for the Government; Ben Margolis, Geo. Andersen, Robert W. Kenny, Esqs., appearing as counsel for defendants except defendant Sherman; Arthur Garrett, Esq., appearing as counsel for defendant Sherman; defendants Jeff Kibre and Harry A. McKittrick being present, it is ordered that hearing proceed.

Attorney Rubin moves the Court that all the evidence adduced against all of the defendants except

defendant Sherman, be admitted into evidence as to defendant Sherman and argues in support of said motion. Attorney Rubin further moves that said motion be deemed to be the Government's response to the motion of defendant Sherman for a judgment of acquittal.

Attorney Garrett argues in support of the motion of defendant Sherman for a judgment of acquittal and in opposition to the motion of the Government that all evidence be admitted as evidence against defendant Sherman. Attorney Rubin replies. At 11:00 a.m. court recesses.

At 11:22 a.m. court reconvenes, all being present as before, and it is ordered that hearing proceed. Attorney Margolis moves the Court to strike each and all of the exhibits and all of the [29] testimony, that said motion is being made in behalf of each and every defendant, on the grounds that the exhibits and testimony constitute hearsay as to each of the defendants, and argues in support of said motion.

Attorney Margolis further moves the Court that an entry of a judgment of acquittal be entered as to each of the defendants herein on the grounds that the evidence adduced by the Government is insufficient to sustain a conviction as to each of the defendants and argues to the Court in support of said motion.

Attorney Rubin replies.

The Court denies the motion of Attorney Margolis as to defendants Munson, McComas, Lack-

yard and Markowsky, and ruling is deferred as to defendants Kibre and Hill. At 12:02 p.m. court recesses until 2:00 p.m.

At 2:10 p.m. court reconvenes, all being present as before, and it is ordered that the hearing proceed. Attorney Rubin continues to argue in response to defendants' motion to strike and for a judgment of acquittal. Attorney Margolis replies. The Court denies the motion to strike and for a judgment of acquittal as to defendants Kibre and Hill. Attorney Kenny argues in behalf of said motion of defendants. At 3:20 p.m. court recesses.

At 3:40 p.m. court reconvenes, all being present as before, and it is ordered that hearing proceed. Attorney Kenny resumes his argument. At 4:30 p.m. court adjourns until 10:00 a.m., Apr. 10, 1947.

At a stated term, to wit: The February Term, A.D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday, the 10th day of April, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Peirson M. Hall,
District Judge.

[Title of Cause.]

This cause coming on for further trial and for hearing on motion of the defendants to dismiss the

Indictment and/or non-suit pursuant to notice thereof filed Feb. 18, 1947; Wm. C. Dixon and Robert J. Rubin, Special Attorneys, appearing as counsel for the Government; Messrs. Katz, Gallagher, and Margolis, by Ben Margolis, Esq., and Messrs. Gladstein, Andersen, Resner, Sawyer, and Edises, by Geo. Andersen, Esq., and Robert W. Kenny, Esq., appearing as counsel for all the defendants herein, except Defendant Sherman for whom Arthur Garrett, Esq., is present as counsel; Defendants Kibre and McKittrick being present; and counsel stipulating that the said attorneys and defendants are present;

Attorney Kenny resumes his argument in support of the said motion. At 11:05 a.m. court recesses. At 11:25 a.m. court reconvenes and all being present as before, Attorney Kenny makes a statement; and,

The Court, being now fully advised in the premises, and after due consideration, orders that the motion of Defendant Sherman to strike all exhibits and testimony is granted, and that a judgment of acquittal be entered as to the said Defendant Sherman; counsel for Defendant Sherman to prepare form of judgment.

The Court now orders that the motion of all the other defendants to strike exhibits and testimony, and for non-suit, be denied, and that proceedings on trial are hereby continued to 10:30 a.m.. April 14, 1947. [31]

At a stated term, to wit: The February Term, A.D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday, the 16th day of April, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Peirson M. Hall,
District Judge.

[Title of Cause.]

This cause coming on for further jury trial; William C. Dixon and Robert J. Rubin, Spec. Assts. to the Attorney General, appearing as counsel for the Government; Ben Margolis, Geo. Anderson and Robert W. Kenny, Esqs., appearing as counsel for defendants; defendants Jeff Kibre, Gilbert Zafran, F. R. Smith, Otis W. Sawyer, W. B. McComas, Harry A. McKittrick and Charles McLauchlan being present, and counsel stipulating that all are present, including the jury, it is ordered that the trial proceed.

Alexander Waissbord, (2312 Cheremoya Av., L. A.) is called, sworn and testifies for the defendants. Defendants' Exhibit M is offered and ordered marked for identification only. Hazel V. Merry (414 Stanford Av., L. A.) is called, sworn and testifies for the defendants and Defendants' Exhibit N is offered and ordered marked for identification. Brigham Grasteit (1308 E. 1st St., L. A.) is called,

sworn and testifies for the defendants. Witness Kibre resumes the witness stand and testifies further in behalf of the defendants. At 11:05 a.m. the jury is admonished and court recesses.

At 11:22 a.m. court reconvenes, all being present as before, except the jury, the Court and counsel discuss the admissibility into evidence of Defendants' Exhibits M and N and many other like exhibits to be offered. At 11:55 a.m. the jury returns into court, and on motion of Attorney Rubin, the testimony of each of Witnesses Waissbord, Merry and Grasteit is stricken and Defendants' Exhibits M and N and also ordered stricken from the record. [32]

Witness Kibre resumes the witness stand and testifies further in behalf of the defendants. At noon the jury is admonished and court recesses until 2:00 p.m.

At 2:00 p.m. court reconvenes and all appearing as before, except the jury, it is ordered that the trial proceed. Attorney Gordon Shallenberger appearing for the following fresh fish dealers, to-wit: American, Terminal Tomich, State, Catalina, L. A. Fish, Independent, J. P. Horman, Star Fisheries, Standard, Zankich Bros., Pioneer, Ocean and Bay-side; moves to quash subpoena duces tecum directed to each of said dealers; that each be quashed in its entirety on the grounds of unreasonableness and an invasion of privacy under Rules 17-C, F.R.C.P. Attorney Margolis replies and opposes said motion.

The Court orders hearing on said motion continued to Friday, 10:00 a.m., April 18, 1947, and that

counsel prepare and file any supporting affidavits or other documents in support of and in opposition to same.

At 2:15 p.m. the jury returns into court, and it is ordered that the trial proceed. Witness Kibre resumes witness stand and testifies further in behalf of defendants and Defendants' Exhibit O is offered and ordered admitted in evidence. At 3:10 p.m. court recesses.

At 3:25 p.m. court reconvenes, all appearing as before, including the jury and counsel so stipulating, it is ordered that trial proceed. Witness Kibre resumes the witness stand and testifies further in behalf of the defendants. Defendants' Exhibits P, Q, R and S for identification are offered and only Defendants' Exhibits R and S are ordered admitted into evidence, Defendants' Exhibit R being the portion circled in red pencil on U. S. Exh. 201 in evidence.

At 4:25 p.m. the jury is admonished and court recesses until 10:00 a.m., April 17, 1947. [33]

At a stated term, to wit: The February Term, A.D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday, the 18th day of April, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Peirson M. Hall,
District Judge

[Title of Cause.]

This cause coming on for hearing on motion of certain individuals, subpoenaed to appear herein, to quash subpoenas duces tecum; Wm. C. Dixon and Robert J. Rubin, Esqs., Special Assistants to the Attorney General, appearing as counsel for the Government; Messrs Katz, Gallagher, and Margolis, by Ben Margolis, Esq., and Messrs. Gladstein, Andersen, Resner, Sawyer, and Edises, by Geo. Andersen, Esq., and Robert W. Kenny, Esq., appearing as counsel for all the defendants herein except Defendant Sherman; Defendant Kibre being present; and Gordon P. Shallenbarger, Esq., appearing as counsel for certain individuals.

Attorney Shallenbarger makes a statement that it is difficult for the witness whom he represents, viz. the fresh fish dealers, to demonstrate the materiality of the books and records of the said witness, that being the burden of the defendants in this case, and the Court concurs.

Attorney Margolis informs the Court of the materiality of such evidence, citing certain testimony from the transcript in support thereof.

Attorney Shallenbarger makes a statement in opposition to claims of the defendants. At request of the Court, Attorney Rubin makes a statement in opposition to demands of the defendants by way of subpoenas duces tecum.

The Court, being now fully informed by all counsel, orders motion to quash subpoenas duces tecum granted. [34]

It is ordered that this case is hereby continued to 2 p.m., April 21, 1947, for hearing defendants' offer of proof re admission of certain evidence. [35]

[Title of District Court and Cause.]

PROPOSED INSTRUCTIONS REFUSED

The within proposed instruction of the plaintiff and the defendants were considered and refused at a conference on May 1, 1947. The grounds and reasons for refusal are set forth in the stenographic record of that conference, as are also the objections of the parties and the grounds therefor.

/s/ PEIRSON M. HALL.

Judge.

[Endorsed]: Filed May 1, 1947. [36]

[Title of District Court and Cause.]

INSTRUCTIONS

The defendants request the Honorable District Court of the United States to give the jury the following instructions: [37]

Defendant's Proposed Instruction No. 2

I instruct you that under the laws of the State of California there are many statutes and regulations relating to and governing the catching and marketing of fish. That among these laws are the following:

1. Section 1061 of the Fish & Game Code provides as follows: "Regulation and Control

by Commission. The Commission may regulate and control fishing boats, barges, lighters or tenders, receptacles or vehicles containing fish, commercial fishermen, packers, reduction plants, plants where fish products are manufactured, and dealers in fish, mollusks, or crustaceans, or fishery products, in so far as necessary to insure the taking and delivery of fish and fishery products in a wholesome and sanitary condition to canning, packing or preserving plants, or to any plant where fishery products are manufactured, or to any fresh fish dealer, and to prevent deterioration and waste of fish."

2. Section 1064 of the Fish & Game Code reads as follows: "Deterioration or waste of fish: Use for reduction. It is unlawful to cause or permit any deterioration or waste of any fish taken in the waters of this State, or to take, receive or agree to receive more fish than can be used without deterioration, waste or spoilage. Except as allowed by this code, it is unlawful to use any fish, or part thereof, except fish offal, in a reduction plant or by a reduction process."

That under Sections 1013, 1014, 1073 and 1091 of the Fish & Game Code of the State of California it is provided that full and complete records of all fish caught and delivered to either [38] fish markets or fish dealers or canners must be kept. [39]

Defendants' Proposed Instruction No. 3

I further instruct you that a regulation of the Fish & Game Commission of the State of California provides as follows:

“In order to prevent waste of fish, no person shall take or bring in to any cannery, packing, preserving, reduction or other plant, fish in excess of an amount for which he has a bona fide order in writing, either from the plant to which the fish are to be delivered, or from an organization acting for the plants or for the fishermen within the region; and no person shall deliver fish to a packing plant which are of a size, condition or species not specified in the bona fide order.

“To prevent waste of fish, fishermen shall, to the best of their ability, avoid impounding more fish when laying out the net than they intend to load on their boat, or of impounding fish of a size or species which do not comply to this order. In cases where more fish are accidentally caught in the net than it is desired to take on their boat or lighter, or in cases where fish which in size, quality or species do not conform to this order, are accidentally caught in the net, fishermen shall release the excess fish or the fish which do not comply to this order while they are still alive and before they commence brailing out the catch.”

General Order No. 12. [40]

Defendant's Proposed Instruction No. 4

I further instruct you that in this case the government must prove that the alleged conspiracy would have had a direct effect upon interstate commerce in fresh fish; for unless the alleged agreement would have an affect upon interstate commerce—that is, interfere with the movement of things or commodities over state lines—there could be no violation of the Anti-Trust Laws. And further, even if you should find that the agreement may have an effect upon interstate commerce, if you find that its effect upon interstate commerce is only indirect, or incidental or remote to such commerce, then you should find all of the Defendants “Not Guilty.”

U. S. vs. Bay Area Painters,

49 Fed. §§ 733, 737;

Hopkins vs. U. S.—*Infra*;

Anderson vs. U. S.—*infra*. [41]

Defendants' Proposed Instruction No. 5

Purpose of Act.

The Sherman Anti-Trust Act was enacted in order to eliminate the evils of trusts and monopolies, and was enacted in the era of trusts of combinations of businesses and of capital organized and directed to control of the market by suppression of competition in the marketing of goods; the monopolistic tendency of which had become a matter of public concern; that its purpose was to protect consum-

ers from monopoly prices, but not necessarily to serve as a restraining code or law to regulate and police all kinds and types of interruption and obstruction to the flow of trade. Congress feared the concentrated power of business organizations to dominate markets and prices, and intended to outlaw business monopolies.

The Act does not provide that an agreement by a laborer or producer or combination of laborers or producers for the sale of the labor of a human being, or the things wrought or produced by his labor would be prohibited by the Act, even though the things or articles made or produced by him were to be later shipped in interstate commerce.

Anderson vs. Shipowners,

71 L. Ed. 298, 302;

Borman-Sherman Act, Page 3;

Allen Bradley vs. Local Union,

89 L. Ed. 1946. [42]

Defendants' Proposed Instruction No. 6

As to Rule of Reason.

I instruct you that the Anti-Trust Act does not forbid or restrain the power to make normal or usual contracts to further trade by resorting to all normal methods, whether by agreement or otherwise, to accomplish such purpose. In other words, the term "restraint of trade" should be given a meaning which would not destroy the right to contract, and render difficult, if not impossible, any

movement of trade in the channels of interstate commerce. Therefore, if you find from the facts of this case, that the agreement or contract, or combination, or conspiracy which the Government contends was entered into between the Defendants, was an agreement which reasonably may be considered as a normal or usual agreement for the marketing of their products, then you should find the defendants Not Guilty.

U. S. vs. American Tobacco Co.,

55 L. Ed. 663, 694;

Standard Oil vs. U. S.,

55 L. Ed. 619. [43]

Defendants' Proposed Instruction No. 7

I instruct you that in this case the Defendants are not accused of attempting to create a monopoly in the fish industry or in the fish industry in this, or in any other area—they are solely accused of entering into an agreement among themselves to set the prices at which fish caught by them shall be sold. You are therefore to disregard any claim of the Government, through its attorneys, or any evidence in the case relating to the defendants creating or attempting to create a monopoly; for in this case the defendants are not accused of creating, or attempting to create, any monopoly. (Indictment)

Defendants' Proposed Instruction No. 8

I further instruct that if you find the agreement, combination or so-called conspiracy with which the defendants are charged, to be reasonable, in view of all of its considerations, then and in that event, I instruct you to find all of the defendants Not Guilty.

In determining whether the agreement is reasonable you are to be governed, at least in part, by the following factors:

1. The Fish & Game laws of the State of California, which prohibit waste of fish.

2. The same laws, which require all fish caught to be marketed or used.

3. The same laws, which require fishermen to have bona fide orders for the sale of fish before they are caught.

4. The fact that under such laws, in order to procure orders for sale or delivery of fish to be caught, whether it is reasonable for the fishermen to insist upon a price in advance of embarking on the fishing voyage.

5. Whether it is a fair, sensible and reasonable practice for the Defendants to insist in advance for prices to be set for their catch of fish.

6. Whether it is reasonable for fishermen, whose labor is rewarded by the price at which their catch is sold, to know and determine in advance the basis, or rate, at which they will be compensated.

7. Whether they intended to restrain any sale of fish caught by them, or either of them.

8. The fact that they are not accused of endeavoring to set the resale or consumer price of fish by concert of action with the wholesale buyers or dealers in fish.

9. That one of the purposes and objects of the fishermen is to prevent the decline in fish prices to a point where commercial fishing would not pay them a fair return for their labor.

10. That by setting prices in advance, and at a price considered [45] by them to be fair and reasonable as a return on their labor, the defendants endeavor to stabilize the entire industry.

11. Whether the defendants sought to limit production of fish, or sought to increase the production and procure greater markets for and consumption of fish.

Appalachian Coal vs. U. S., 77 L. Ed. 825;

Standard Oil vs. U. S., 221 U. S. 1;

U. S. vs. American Tobacco, 221 U. S. 106.

Defendants' Proposed Instruction No. 9

I further instruct you that the only matter or facts you may consider in this case must be limited to the so-called agreement between the defendants which the government contends is in restraint of trade—that is, whether under the facts covered by the agreement, the agreement is in unreasonable restraint of trade. You are therefore to disregard

any and all evidence in the case relating to such things as strikes, boycotts, picketing, etc. except in so far as those acts may tend to establish the fact of the defendants entering into or seeking to enter into an agreement to procure certain prices for the fish caught by the labor of the defendants. In other words the law is not concerned with any means used by the Defendants, but is only concerned with whether the agreement itself is in unreasonable restraint of trade.

Apex Hosiery vs. Leader, 84 L. Ed. 469.

Defendants' Proposed Instruction No. 10

I instruct you that if, under the facts of this case, you determine that the Defendants are workers, or that they occupy a position in our economic system consistent with, or equivalent to, workers, then I instruct you that the terms of the Sherman Anti-Trust Law are not applicable to them and you must find each of the Defendants "Not Guilty."

Clayton Act, 15 U. S. C. A. Sec. 17;

Hunt vs. Crombock, 89 L. Ed. 1954;

Allen Bradley vs. Local Union,

89 L. Ed. 1939. [48]

Defendants' Proposed Instruction No. 11

I instruct you that under our law the labor of a human being is not a commodity or article of commerce; that therefore in relation to the product of their labor workers may, among themselves, make any agreement they wish regarding the sale

of the products of their labor, which includes the price at which such products may be sold.

Clayton Act, 15 U. S. C. A. Sec. 17;

Hunt vs. Crombock, 89 L. Ed. 1954, 1956;

Allen-Bradley vs. Local Union,

89 L. Ed. 1939. [49]

Defendants' Proposed Instruction No. 12

As to Co-operatives:

I instruct you that under a law of the United States, persons engaged in the fish industry, as fishermen, catching fish, may act together in collectively catching and marketing the fish caught, and may make and enter into all contracts necessary or desirable to accomplish such purposes.

I therefore instruct you that if you find that the Defendants, as members of the Defendant Union or Association acted or combined together for the purpose of catching fish, and acted or combined together for the purpose of procuring markets and market prices for fish caught by them, that such conduct, or acts or combination on the part of the Defendants, are permissible acts and not a violation of law, and you should therefore find the Defendants "Not Guilty."

15 U. S. C. A. 521;

U. S. vs. Dairy Co-Op., 49 Fed. S. 475;

Columbia River Packers vs. Hinton,

34 Fed. S. 970, 977;

Liberty Warehouse Co. vs. Burley Co-Op.,

72 L. Ed. 473. [50]

Defendants' Proposed Instruction No. 13

I instruct you that if you find, under the facts of this case, that the defendants are the original producers of fish; and that none of their acts or agreements either contemplate or tend to restrict or interfere with competition of middlemen in or in the consumer market, you shall find the Defendants "Not Guilty." [51]

Defendants' Proposed Instruction No. 14

I instruct you that the Sherman Anti-Trust law does not apply to agreements for the sale of fish entered into between the original working producers of such fish. That the Sherman Anti-Trust Act does not apply to agreements between working fishermen, which agreements may have for their object the setting of prices for their catch. That the purpose of the Anti-Trust Act is to prevent agreements relating to the sale of commodities in interstate commerce after such commodities have entered the market. Therefore, if you find that the defendants, as original working producers of fish, entered into agreements regarding the selling of fish, but that such agreements had no effect upon the resale of such fish after the fish entered

the market or channels of trade, then I instruct you that you should find all of the Defendants "Not Guilty."

Sherman Act;

Clayton Act;

Philadelphus Rec. Co. vs. Mfg. Asso.,

63 Fed. S. 254, 261;

Anderson vs. Shipowners Asso.,

71 L. Ed. 298, 302;

Hunt vs. Crombock, 89 L. Ed. 1954. [52]

Defendants' Proposed Instruction No. 15

I further instruct you that working fishermen may agree among themselves for the sale of their catch, they therefore have the right to enter into contracts for the disposition or sale of their products when such products enter the first channels of trade.

U. S. vs. Bay Area Painters Asso.,

49 Fed. S. 733. [53]

Defendants' Proposed Instruction No. 16

I further instruct you that there is no evidence in this case, nor does the government contend, that the Defendant Union or its members sought to control the price of fish in the trading market. And further, that the Sherman Act does not prevent laborers, workers, fishermen or farmers from com-

binning together for the purpose of procuring a price satisfactory to them for the fruits of their labor.

U. S. vs. Dairy Co-Operative Assn.,
49 Fed. S. 475;

Hunt vs. Crumboch, 89 L. Ed. 1954;

Allen Bradley case, *infra*. [54]

Defendants' Proposed Instruction No. 17

If you find from the facts in this case that the purpose and objectives of the Defendant Union and its members was to assure them a reasonable return or price for the fish products caught by their labor, then I instruct you that their activities in demanding a written contract detailing prices to be paid for the fish caught by their labor is not a combination or agreement in restraint of trade and you must therefore find the Defendants "Not Guilty."

Allen-Bradley vs. Local Union, 325 U. S. 797;

U. S. vs. Hutchinson, 312 U. S. 219;

Hunt vs. Crombock, 325 U. S. 821. [55]

Defendants' Proposed Instruction No. 18

It is one of the contentions of the Defendants in this case that in essence they are workers, or laborers, selling their services and the use of their vessels and equipment, as fishermen, at wages to be determined at so many cents per pound for fish delivered.

If you should find as a fact that they are such type of workers, being compensated as mentioned, then I instruct you that no law of the United States prevents them from agreeing among themselves to set a price on the fish, and you must therefore find them "Not Guilty."

Hopkins vs. U. S., 171 U. S. 578;

Anderson vs. U. S., 171 U. S. 604. [56]

Defendants' Proposed Instruction No. 19

I further instruct you that in so far as the facts of this case are concerned it is not a violation of law for fishermen, original working producers of fish, to agree with each other to dispose of their catch at an agreed price, so long as the agreement, does not affect the right of any fisherman, who is a party to the agreement, to engage in the fishing industry and dispose of his catch as advantageously as the others may do.

Therefore, if you find from the facts of this case, and it is not disputed, that it was not the intention of the defendants to limit in any way the fishing activities of any fisherman in the agreement, then you must find all of the Defendants "Not Guilty."

Standard Oil vs. U. S., 55 L. Ed. 619, 641-43.

[Endorsed]: Filed Feb. 18, 1947. [57]

[Title of District Court and Cause.]

SUPPLEMENTAL INSTRUCTIONS

The defendants request the Honorable District Court of the United States to give the jury the following instructions: [58]

Instruction No. S-1

You are instructed that ceiling prices for fish fixed by the Office of Price Administration are fair and equitable prices. They were fixed by the Administrator of that agency under the requirement of the law that he take into due consideration general production costs, general profit levels, and the public interest. Therefore, if you find that the defendants did not agree among themselves to obtain a price for the fish caught by them at a price higher than the ceiling price fixed by the O.P.A., then the prices set by them, as a matter of law, cannot be excessive or the subject of a criminal prosecution, and you must return a verdict of not guilty.

60 Harvard L. Rev. 133;

64 Fed. Supp. 140;

50 USCA 901, 902. [59]

Instruction No. S-2

You are instructed that the right to picket is a right flowing out of the Constitution of the United States and may be exercised by any citizen or group of citizens. It is, of course, true that trade unions exercise this right to a greater extent than other

groups or organizations, but the right to picket may be exercised by any group or organization of our people.

I therefore further instruct you that the defendants in this case were completely within their rights in picketing the premises of the mentioned dealer organizations.

New Negro Alliance vs. Sanitary Groc. Co.,
82 L. Ed. 1012. [60]

Instruction No. S-3

You are instructed that some of the evidence in this case may tend to indicate a dispute between the American Federation of Labor and the Congress of Industrial Organizations. Such a dispute, or any difficulties between these two organizations, have no relevancy to this case and must be disregarded by you in endeavoring to reach a verdict. [61]

Withdrawn.

Instruction No. S-4

You are instructed that the defendants here as a matter of law, are to be considered in the same category as agriculturists and horticulturists, and that agricultural and horticultural organizations instituted for purposes of mutual help and not having capital stock or conducted for profit are exempted from the operation of the anti-trust laws. Therefore, if you find that the defendants combined in an organization to sell the fish caught by them and did not include in their organization any

persons other than fishermen operating in the same manner that they did, you must return a verdict of not guilty.

(15 USCA Sec. 17; Sen. Rep. No. 698, 63rd Congress, 2d Session, 1914, p. 46.) [62]

Instruction No. S-5

I instruct you that a working producer is a person the basis of whose livelihood is his own labor or a person whose livelihood has his own labor as one of its chief factors. You are instructed that a working producer who joins solely with other similar working producers to fix the price of articles produced by them is not guilty of any violation of the anti-trust laws, and therefore, if you find the defendants are working producers who combined solely with other similar working producers for such purpose, you must return a verdict of not guilty.

(15 USCA Sec. 17; Sen. Rep. No. 698, 63rd Congress, 2nd Session, 1914, p. 46.) [63]

Instruction No. S-6

Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out

the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws.

Such organizations are those where labor is the basis or one of the chief factors in the organizations, as in the case of labor organizations proper, and in agricultural and horticultural organizations. The reason for the exemption of these organizations from the operation of the anti-trust laws is because the labor of a human being is not a commodity or article of commerce.

Therefore, if you find that the defendants acted as members of an organization in which labor was the basis or one of the chief factors, they did not act in restraint of trade, and you must return a verdict of not guilty.

(15 USCA Sec. 17; Sen. Rep. No. 698, 63rd Congress, 2nd Session, 1914, p. 46.) [64]

Instruction No. S-7

You have been advised that all of the defendants claim, (among other defenses) to have been operating under the terms and protection of the Fishery Marketing Act, a law of the United States.

If you find that their activities come within the meaning of that Act, then you must find the defendants Not Guilty.

In determining whether the activities of the defendants come within the meaning of such Act,

you are instructed that it is the policy of the law, in criminal cases, that wherever, from a given set of facts, it is reasonably possible for a jury to conclude that such acts are within the law, it is the duty of the jury to so find. In other words after considering the nature of the agreement entered into by the defendants, and bearing in mind the terms of the Fishery Marketing Act as heretofore explained to you, if it is reasonably possible for you to conclude that the Acts of the defendants have the protection of such Act, it is your duty to so find and acquit the defendants.

In considering this question, you should ignore the evidence relating to picketing, boycotting, interstate commerce and strikes.

United Brotherhood vs. Lumber Products
Asso.

Oct. Term—U. S. Supreme Court. [67]

Instruction No. S-8

An employee-employer relationship does not depend on the existence of a payroll providing for regular compensation of workers at regularly-stated intervals. Such a relationship can also exist if the worker is paid for his services on a piece-work basis under which he is only paid as he delivers the article or piece which he has produced as the result of his labor and use of his own tools. Labor disputes may arise between such a piece worker and his employer.

A labor dispute may also arise between persons who, for other purposes, are technically indepen-

dent contractors or businessmen and other persons, or groups of persons, who furnish the former the principal source of their livelihood.

Such a circumstance legally exists where the so-called independent contractor or businessman gains his livelihood as the result of his own labor and the use of his own tools and where, as an individual, he lacks equal bargaining power in his dealings with those from whom his livelihood is gained.

Both piece workers and independent contractors or businessmen who find themselves in this economic position may lawfully join together in a labor union and, by collective bargaining, seek to increase their compensation and better their working conditions.

If you find that the defendants are piece workers or independent contractors or businessmen, occupying the economic position I have just described to you, and if you further find that their activities as described in the indictment were confined to a combination among themselves [65] designed to improve their own situation, then they have not violated the Sherman Act in any way and you must acquit.

Milk Wagon Drivers' Union v. Lake Valley Farm Products, 311 U. S. 91.

N. L. B. R. vs. Hearst, 322 U. S. 111 at 127.

New Negro Alliance vs. Sanitary Grocery Co., 303 U.S. 552, U.S. vs. Hutcheson, 312 U. S. 219. [66]

Instruction No. S-9

I further instruct you that evidence of coercive methods and tactics such as boycotting and picketing was only admitted for the limited purpose of showing the participation of the various individual defendants in seeking to obtain a price-fixing contract. It is the contract alone that determines the legality or illegality of the acts of the defendants under the conspiracy alleged in the indictment. If you find that the contract proposed by the fishermen to the fish dealers (Government's Exhibit No. 3) is one which they were legally permitted to enter into, then you must disregard the evidence of boycotting and picketing for any purpose and find the defendants not guilty.

Apex Hosiery vs. Leader, 310 U. S. 469.

Hunt v. Crunboch, 325 U.S. 821.

Allen Bradley vs. Local Union No. 3, 325 U. S. 797. [68]

Instruction No. S-10

I further instruct you that one of the defenses of the defendants is that the organization to which they belong and through which they function, Local 36, is a trade or labor union, and therefore, the acts of the defendants are not subject to the penalties of the Sherman Act. If they are acting solely in self interest and not in collusion with other economic groups you should acquit the defendants.

In determining whether said Local 36, one of the defendants, is a trade or labor union, you are instructed that it is the policy of the law, in criminal cases (and this is a criminal case) that wherever, from a given set of facts, it is reasonably possible for a jury to make a finding or determination of fact in favor of the defendant, it is the duty of the jury to so find. In other words, after considering the nature of the activities, and history of Local 36, if it is reasonably possible for you to conclude that it is a trade or labor union, and is acting solely in self interest and not in collusion with other economic groups it is your sworn duty to acquit the defendants. [69]

[Title of District Court and Cause.]

Defendants' Proposed Instructions
(Second Supplement)

The defendants request this Honorable District Court of the United States to give the jury the following instructions: [70]

Instruction No. S-12

I further instruct you that in order for the defendants to have the protection of the Fish Marketing Act, it is not necessary that they all act together in the catching of the fish; it is sufficient under the law for the defendants to have the benefit of the Fish Marketing Act if they are members of an association which acts as a bargaining agent

or sales representative for the fishermen and through which agent prices are negotiated and established.

Stark County Milk Products Assn. vs. Tabeling, 192 Ohio St. 159; 98 A. L. R. 1393.

Johnson vs. Georgia-Carolina Retail Milk Producers Assn., 182 Ga. 695; 186 S E. 824.

Hulbert—Legal Phases of Cooperative Associations, P. 119. [71]

Instruction No. S-13

I further instruct that in the Fish Marketing Act, to which reference has been made, the word "co-operative" is not used; nor is it contemplated, nor is it required by the terms of the Fish Marketing Act for a group of persons such as fishermen to receive the benefit of the Act that they be a cooperative as that term is legally and generally understood; that it is sufficient for the fishermen to act together in the marketing or selling of their catches of fish.

15 U. S. C. A. 521. [72]

Instruction No. S-14

I further instruct you that under the laws of the State of California (and such laws are applicable in this Federal Court), fishermen catching fish acquire no title or ownership in the fish they catch. They merely acquire the right to use or dispose of

the fish according to the laws of the State of California. These laws permit fishermen to take or catch fish and dispose of them as provided by law.

I therefore instruct you that the only right the fishermen acquire in the fisheries of this state is the right to use their labor and tools in the catching and taking of fish and to dispose of the fruits of their labor in accordance with the laws referred to.

I therefore further instruct you that the last mentioned matters should be considered with relation to one of the defenses of the defendants in this case which is that the principal or chief factor in their operations is labor expended in the taking or catching of fish and that in essence what they sell is their labor.

I therefore further instruct you that Section 6 of the Clayton Act, which has been referred to in this case, reads in part, as follows:

“The labor of a human being is not a commodity or article of commerce . . . nor shall (labor) organizations or the members thereof be held or construed to be illegal combinations or conspiracies in restraint of trade under the anti-trust laws.”

I therefore further instruct you that if you find the activities and operations of the defendants consist of their labor as set forth in the quoted portion of the Clayton Act, then I instruct you that the actions of the defendants in entering into [73] any

alleged agreement regarding the sale of their fish under the facts of this case are not in violation of law.

People vs. Stafford Packing Co., 193 Cal. 719, 725.

People vs. Huvdon Co., 215 Cal. 54.

People vs. Monterey Fish Products Co., 195 Cal. 557.

Santa Cruz Oil Co. v. Milnor, 55 Cal. App. (2d) 56 15 U. S. C. A. 17. [74]

Instruction No. S-16

In considering the question as to whether the activities of defendants have been unreasonably in restraint of trade, I instruct you that the purpose of the Sherman Anti-Trust Act is to prevent undue restraints of interstate commerce, to maintain its appropriate freedom in the public interest; to afford protection from monopolistic tendencies and combinations. The restrictions imposed by the Sherman Anti-Trust Act are not mechanical or artificial. Its general phrases and language, interpreted to attain its fundamental objects, set up the essential standard of reasonableness. These phrases call for vigilance in the detection and frustration of all efforts unduly or unreasonably to restrain the free course of interstate commerce; But they do not seek to establish a more delusive liberty either by making impossible the normal and fair expansion of that commerce or the adoption of reasonable measures to protect it from injurious

and destructive practices and to promote competition upon a sound basis. The law has established that only such contracts and combinations are within the prohibition of the Act as by reason of intent or the inherent nature of the contemplated acts prejudice the public interest by undue restriction, combination or unduly obstructing the course of trade. The question of application of the statute to any business practice is one of intent and effect and is not to be determined by arbitrary assumption. It is, therefore, necessary in this case to consider the economic conditions peculiar to fish catching and marketing; the practices which have existed; the nature of the defendants' methods, problems and difficulties in selling their catches; and the reasons which led the defendants to adopting the method of selling their catch and the probable consequences of carrying out that plan in relation to market prices and other [75] matters affecting the public interest insofar as the catching, sales and consumption of fish affect that public interest.

Appalachian Coals v. U. S., 288 U. S. 344.

Defendants' Proposed Instruction No. S-17

I further instruct you that in enacting the Sherman Anti-Trust Act the evil sought to be eliminated was the bad effect upon interstate commerce which had been caused by monopolists agreeing among themselves to increase prices to consumers, and Congress felt that in artificially increasing such consumer prices such artificial prices would lessen the

flow of interstate commerce. But it is the effect upon consumer prices which the Sherman Act sought to eliminate and therefore an agreement relating to prices must be an agreement which would tend to, or have an effect upon, consumer prices in order to be a crime under the Sherman Anti-Trust Act.

Therefore, if you find from the evidence in this case that there was an agreement among the defendants to set the prices of the fish they sold to the fish dealers or fish markets, but that said agreement would not tend to, or have an effect upon, consumer prices, then I instruct you that such an agreement is not a crime or violative of the Sherman Anti-Trust Act.

Standard Oil Co. vs. U. S.—Supra.

Socony Vacuum Oil Co. vs. U.S.—Supra

Defendants' Proposed Instruction No. S-18

I further instruct you that with reference to Exhibit No. 3, proposed stabilization agreement introduced by the government, is, by its terms, an open shop contract. In other words, in labor relations there is both a closed shop and an open shop. A closed shop places a limitation upon the right of the employer to hire workers or to produce supplies or equipment; the open shop places no such restriction upon an employer and the employer may hire or deal with whom he pleases.

Under the terms of Exhibit No. 3, it is an open

shop contract placing no restrictions upon the rights of the dealers to hire whom they please or deal with whom they please. [78]

At a stated term, to wit: The February Term, A. D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday, the 7th day of May, in the year of our Lord, one thousand nine hundred and forty-seven.

Present: The Honorable Peirson M. Hall,
District Judge.

[Title of Cause.]

This cause coming on for further jury trial of defendants Local 36 IFAWA, Jeff Kibre, Gilbert Zafran, Clifford C. Kennison, F. R. Smith, George Knowlton, Otis W. Sawyer, W. B. McComas, Harry A. McKittrick, Arthur D. Hill, C. Lloyd Munson, Charles McLaughlan, Robert M. Phelps, Burt D. Lackyard, and Ray J. Morrowski; William C. Dixon and Robert J. Rubin, Esqs., appearing for the Government; Ben Margolis, George Anderson and Robert W. Kenny, Esqs., appearing as counsel for said defendants who are present, and the jury being present, it is ordered that the trial proceed.

Attorney Margolis makes the closing argument in behalf of the defendants. At 10:40 a.m. the jury is admonished and court recesses.

At 11:00 a.m. the Court reconvenes, all being

present as before including the jury. Attorney Margolis resumes his argument. At 12:00 noon the jury is admonished and court recesses.

At 3:03 p.m. Court reconvenes, all being present as before, including the jury. Attorney Dixon makes closing argument in behalf of the Government. At 4:00 p.m. court recesses.

At 4:25 p.m. the Court instructs the jury. At 5:25 p.m. Bailiffs Brand, Strong, and Mrs. Terry Lundy are sworn to care for the jury and the jury thereupon retires to the jury room in the custody of said bailiffs. [79]

At 9:45 p.m. the jury returns to the court room and the Court asks them if they have arrived at a verdict, to which the foreman replies they have. The Court instructs the clerk to read the verdict, which is as follows:

* * * *

and orders the verdict filed. The jury is polled and all the jurors answer yes, that it is their verdict. The jury is excused until further notice. All defendants are present in court except Otis Sawyer who was excused by the Court earlier. Attorney Ben Margolis states he will move for a new trial. Attorney Dixon states he has no objection to referring the matter to the Probation Officer. The Court orders all further proceedings versus all defendants continued to May 21, 1947, 2:00 p.m. and each and all defendants are directed to return at that hour and in the meantime may remain on present bond. The Court orders Exhibits 43, 44, 45, 42, 42-B, 42-A and 45-A returned and same are returned in open court. [80]

In the District Court of the United States Southern
District of California Central Division

No. 18842-CRIM.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LOCAL 36 OF INTERNATIONAL FISHER-
MEN and ALLIED WORKERS OF AMER-
ICA, JEFF KIBRE, GILBERT ZAFRAN
CLIFFORD C. KENNISON, F. R. SMITH,
GEORGE KNOWLTON, OTIS W. SAW-
YER, W. B. McCOMAS, HARRY A.
McKITTRICK, ARTHUR D. HILL, C.
LLOYD MUNSON, CHARLES McLAUCH-
LAN, ROBERT M. PHELPS, BURT D.
LACKYARD, and RAY J. MORKOWSKI,
Defendants.

VERDICT

We, the Jury in the above-entitled case, find the defendant, Local 36 of International Fishermen and Allied Workers of America Guilty as charged in the Indictment; find the defendant Jeff Kibre Guilty as charged in the Indictment; find the defendant Gilbert Zafran Guilty as charged in the Indictment; find the defendant Clifford C. Kennison Guilty as charged in the Indictment; find the defendant F. R. Smith Guilty as charged in the Indictment; find the defendant George Knowlton

Guilty as charged in the Indictment; find the defendant Otis W. Sawyer Guilty as charged in the Indictment; find the defendant W. B. McComas Guilty as charged in the Indictment; find the defendant Harry A. McKittrick Guilty as charged in the Indictment; find the defendant Arthur D. Hill Guilty as charged in the Indictment; find the defendant C. Lloyd Munson Guilty as charged in the Indictment; find the defendant Charles McLaughlin Guilty as charged in the Indictment; find the defendant Robert M. Phelps Guilty as charged in the Indictment; find the defendant Burt D. Lackyard Guilty as charged in the Indictment; and, find the defendant Ray J. Morkowski Guilty as charged in the Indictment.

A. S. PATRICK,

Foreman of the Jury.

Dated: Los Angeles, California, May 7th, 1947.

[Endorsed]: Filed May 7, 1947.

[Title of District Court and Cause.]

MOTION IN ARREST OF JUDGMENT

The defendants Local 36 of the International Fishermen and Allied Workers of America, Jeff Kibre, Gilbert Zafran, Clifford C. Kennison, F. R. Smith, George Knowlton, Otis W. Sawyer, W. B. McComas, Harry A. McKittrick, Arthur D. Hill,

C. Lloyd Munson, Charles McLaughlin, Robert M. Phelps, Burt D. Lackyard, and Ray J. Morkowski, and each of them, move the Court to arrest the judgment against defendants, and each of them, for the following reasons:

1. The indictment does not state facts sufficient to constitute an offense against the United States.

2. The Court is without jurisdiction of the offense under the indictment herein in that the indictment was returned [82] by a grand jury improperly selected in each and all of the particulars set forth in defendants' motion to dismiss on the grounds that the Grand Jury was improperly selected.

GLADSTEIN, ANDERSEN,
RESNER, SAWYER &
EDISES,
ROBERT W. KENNY,
KATZ, GALLAGHER &
MARGOLIS.

By /s/ BEN MARGOLIS,

Attorneys for Defendants.

Received Copy of the within Motion in Arrest of Judgment this 12th day of May, 1947.

WM. C. DIXON, lm.

Attorney for Plaintiff.

[Endorsed]: Filed May 12, 1947.

[Title of District Court and Cause.]

MOTION FOR JUDGMENT OF ACQUITTAL
OR FOR NEW TRIAL

The defendants Local 36 of the International Fishermen and Allied Workers of America, Jeff Kibre, Gilbert Zafran, Clifford C. Kennison, F. R. Smith, George Knowlton, Otis W. Sawyer, W. B. McComas, Harry A. McKittrick, Arthur D. Hill, C. Lloyd Munson, Charles McLaughlin, Robert M. Phelps, Burt D. Lackyard, and Ray J. Morkowski, and each of them, move the Court for judgment of acquittal or for a new trial for the following reasons:

1. The Court erred in denying defendants' motion to dismiss the indictment on the grounds that the Grand Jury which returned said indictment was improperly selected in the respects set forth in said motion.

2. The Court erred in denying the challenge to and motion to strike out the entire trial jury panel.

3. The Court erred in denying defendants' motion for acquittal made at the conclusion of the Government's case.

4. The Court erred in denying defendants' motion for acquittal made at the conclusion of the evidence.

5. The verdict is contrary to the weight of the evidence.

6. The verdict is not supported by substantial evidence.

7. The Court erred in sustaining objections to questions put to various witnesses and in refusing to admit evidence offered as set forth in each and all of the oral and written offers of proof made by defendants, and in sustaining objections to the said offers of proof and each and every part thereof.

8. The Court erred in admitting testimony of various witnesses to which objections were made, and particularly in admitting, over objections, secondary evidence without any opportunity of any examination of the books and records which constituted the best evidence.

9. The Court erred in charging the jury and refusing to charge the jury as requested.

GLADSTEIN, ANDERSEN,
RESNER, SAWYER &
EDISES,
ROBERT W. KENNY,
KATZ, GALLAGHER &
MARGOLIS.

By /s/ BEN MARGOLIS,
Attorneys for Defendants.

Motion for Judgment of Acquittal or for New Trial.

Received copy of the with this 12th day of May, 1947.

/s/ WM. C. DIXON,
Attorney for Plaintiff.

[Endorsed]: Filed May 12, 1947.

At a stated term, to wit: The February Term. A. D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday, the 21st day of May, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Peirson M. Hall,
District Judge.

[Title of Cause.]

This cause coming on for hearing on (1) motions of the defendants for judgment of acquittal or for a new trial, and in arrest of judgment, pursuant to notice thereof filed May 12, 1947, and (2) motion of the National Automobile & Casualty Insurance Co. to restore to the calendar said petitioner's motion to set aside order of forfeiture heretofore made and exonerate bond of defendant Otis W. Sawyer, pursuant to notice thereof filed May 13, 1947; and (3) on the report of the Probation Officer and sentence of each of the defendants' herein; Wm. C. Dixon and Robert J. Rubin, Special Assistants to the Attorney General, appearing as counsel for the Government; Thos. P. Sawyer, Esq., appearing as counsel for the National Automobile & Casualty Insurance Co.; Messrs. Katz, Gallagher and Margolis by Ben Margolis, Esq., and Robert W. Kenny, Esq., appearing as counsel for the defendants; Defendants Kibre, Zafran, Kennison, Smith, Knowlton, Sawyer, McComas, McKit-

trick, Hill, Munson, McLaughlan, Phelps, Lackyard, and Morkowski being present:

Attorney Margolis argues in support of the said motions; Attorney Kenny argues in support of the said motions; Attorney Rubin makes a statement;

It is ordered that (1) motions of the defendants for judgment of acquittal or for a new trial, etc., are denied; [88]

Attorney Sawyer makes a statement in support of the said motion (2) to vacate order of forfeiture;

It is ordered that motion (2) of National Automobile & Casualty Insurance Co is granted and order of forfeiture is set aside.

Attorney Dixon makes certain recommendations regarding sentence of each defendant herein and in addition thereto recommends the maximum fine of \$5,000 be imposed upon the defendant Union, the judgments being as follows: [89]

District Court of the United States, Southern
District of California, Central Division

No. 18842

UNITED STATES

vs.

ARTHUR D. HILL

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of
U. S. C., Title 15, Sec. 1, the Sherman Anti-Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, Arthur D. Hill,

appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$10.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to

the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL,

United States District Judge.

[Endorsed]: Filed May 21, 1947. [90]

District Court of the United States, Southern
District of California, Central Division

No. 18842

UNITED STATES

vs.

CLIFFORD C. KENNISON

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of
U. S. C., Title 15, Sec. 1, the Sherman Anti-
Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, Clifford C. Kennison, appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful com-

bination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$10.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL,

United States District Judge.

[Endorsed]: Filed May 21, 1947. [91]

District Court of the United States, Southern
District of California, Central Division

No. 18842

UNITED STATES

vs.

JEFF KIBRE

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of
U. S. C., Title 15, Sec. 1, the Sherman Anti-
Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, Jeff Kibre, appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him,

and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$2000.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL,

United States District Judge.

[Endorsed]: Filed May 21, 1947. [92]

District Court of the United States, Southern
District of California, Central Division

No. 18842

UNITED STATES

vs.

GEORGE KNOWLTON

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of
U. S. C., Title 15, Sec. 1, the Sherman Anti-
Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, George Knowl-

ton, appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$10.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to

the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL,

United States District Judge.

[Endorsed]: Filed May 21, 1947. [93]

District Court of the United States, Southern
District of California, Central Division

No. 18842

UNITED STATES

vs.

BURT D. LACKYARD

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of
U. S. C., Title 15, Sec. 1, the Sherman Anti-
Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, Burt D. Lackyard, appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful com-

bination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$10.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL,

United States District Judge.

[Endorsed]: Filed May 21, 1947. [94]

District Court of the United States, Southern
District of California, Central Division

No. 18842

UNITED STATES

vs.

LOCAL 36 OF INTERNATIONAL FISHER-
MEN & ALLIED WORKERS OF AMERICA

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of
U. S. C., Title 15, Sec. 1, the Sherman Anti-
Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, Local 36 of I. F. & A. W. A., appearing by counsel, Ben Margolis, Geo. Andersen and Robert W. Kenny, Esqs., and its local representative and secretary, Gilbert Zafaran, and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade and commerce and the defendant having been now asked whether it has anything to say why

judgment should not be pronounced against it and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, is hereby ordered to pay a fine unto the United States of America in the sum of \$3000.00, and that execution levy forthwith.

It Is Further Ordered that the defendant be granted a stay of execution until 12 noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL,

United States District Judge.

[Endorsed]: Filed May 21, 1947. [95]

District Court of the United States, Southern
District of California, Central Division

No. 18842

UNITED STATES

vs.

W. B. McCOMAS

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of
U. S. C., Title 15, Sec. 1, the Sherman Anti-
Trust Act.

On this 21st day of May, 1947, came the United
States Attorney, and the defendant, W. B. McCo-

mas, appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$10.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to

the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL,

United States District Judge.

[Endorsed]: Filed May 21, 1947. [96]

District Court of the United States, Southern
District of California, Central Division

No. 18842

UNITED STATES

vs.

HARRY A. McKITTRICK

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of
U. S. C., Title 15, Sec. 1, the Sherman Anti-
Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, Harry A. McKittrick, appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful com-

bination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$1500.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL,

United States District Judge.

[Endorsed]: Filed May 21, 1947. [97]

District Court of the United States, Southern
District of California, Central Division

No. 18842

UNITED STATES

vs.

CHARLES McLAUHLAN

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of
U. S. C., Title 15, Sec. 1, the Sherman Anti-
Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, Charles McLauchlan, appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. eKnnny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him,

and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$2000.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL,

United States District Judge.

[Endorsed]: Filed May 21, 1947. [98]

District Court of the United States, Southern
District of California, Central Division

No. 18842

UNITED STATES

vs.

RAY J. MORKOWSKI

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of
U. S. C., Title 15, Sec. 1, the Sherman Anti-
Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, Ray J. Morowski, appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$1500.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to

the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL,

United States District Judge.

[Endorsed]: Filed May 21, 1947. [99]

District Court of the United States, Southern
District of California, Central Division

No. 18842

UNITED STATES

vs.

C. LLOYD MUNSON

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of
U. S. C., Title 15, Sec. 1, the Sherman Anti-
Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, C. Lloyd Munson, appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to

fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$10.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL,

United States District Judge.

[Endorsed]: Filed May 21, 1947. [100]

District Court of the United States, Southern
District of California, Central Division

No. 18842

UNITED STATES

vs.

ROBERT M. PHELPS

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of
U. S. C., Title 15, Sec. 1, the Sherman Anti-
Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, Robert M. Phelps, appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him,

and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$10.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL,

United States District Judge.

[Endorsed]: Filed May 21, 1947. [101]

District Court of the United States, Southern
District of California, Central Division

No. 18842

UNITED STATES

vs.

OTIS W. SAWYER

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of
U. S. C., Title 15, Sec. 1, the Sherman Anti-
Trust Act.

On this 21st day of May, 1947, came the United
States Attorney, and the defendant, Otis W. Saw-

yer, appearing in proper person, and by counsel, Ben Margolis, George Anderson and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$10.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to

the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL,

United States District Judge.

[Endorsed]: Filed May 21, 1947. [102]

District Court of the United States, Southern
District of California, Central Division

No. 18842

UNITED STATES

vs.

F. R. SMITH

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of
U. S. C., Title 15, Sec. 1, the Sherman Anti-
Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, F. R. Smith. appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to

fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$10.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL,

United States District Judge.

[Endorsed]: Filed May 21, 1947. [103]

District Court of the United States, Southern
District of California, Central Division

No. 18842

UNITED STATES

vs.

GILBERT ZAFRAN

JUDGMENT AND COMMITMENT

Criminal Indictment in one count for violation of
U. S. C., Title 15, Sec. 1, the Sherman Anti-
Trust Act.

On this 21st day of May, 1947, came the United States Attorney, and the defendant, Gilbert Zaf-ran, appearing in proper person, and by counsel, Ben Margolis, George Andersen and Robert W. Kenny, Esqs., and

The defendant having been convicted on a verdict of guilty of the offense charged in the Indictment in the above-entitled cause, to wit: knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans in restraint of trade or commerce and the defendant having been now asked whether he has anything to say why

judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine unto the United States of America in the sum of \$2000.00, and stand committed until paid.

It Is Further Ordered that the defendant be granted a stay of execution of commitment for non-payment of said fine until 12, noon, Wednesday, May 28, 1947.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

/s/ PEIRSON M. HALL,

United States District Judge.

[Endorsed]: Filed May 21, 1947. [104]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Names and addresses of defendants and appellants:

Local 36 of the International Fishermen and Allied Workers of America, Berth 73, Fishermen's Wharf, San Pedro, Calif.;

Jeff Kibre, 428 N. Sycamore Street, Los Angeles 36, Calif.;

Gilbert Zafran, 920 37th Street, San Pedro, Calif.;

Clifford C. Kennison, Knoll Hill Trailer Court, San Pedro, Calif.;

F. R. Smith, 6221½ N. 97th Street, Los Angeles, Calif.;

George Knowlton, 717 Weymouth Avenue, San Pedro, Calif.

Otis W. Sawyer, 2417 Sonoma Ave., Torrence, Calif.; [105]

W. B. McComas, 842 N. Cherokee, Hollywood 38, Calif.;

Harry A. McKittrick, P. O. Box 901, Santa Monica, Calif.;

Arthur D. Hill, 1810 Ocean Front, Newport Beach, Calif.;

C. Lloyd Munson, 421 31st Street, Newport Beach, Calif.;

Charles McLaughlan, Route 4, Box 549-C, Santa Ana, Calif.;

Robert M. Phelps, 6257 Tipton Way, Los Angeles, Calif.;

Burt D. Lackyard, 306 W. 1st Street, Santa Ana, Calif.;

Ray J. Morkowski, 6752 Elmore Street, San Diego, Calif.;

Names and addresses of defendants' and appellants' attorneys:

Katz, Gallagher & Margolis, 111 W. 7th St., Los Angeles, Calif.;

Gladstein, Andersen, Resner & Sawyer, 240 Montgomery Street, San Francisco, Calif.;

Kenny and Cohn, 629 S. Hill Street, Los Angeles 14, Calif.;

Offense:

Violation of Section 1, Title 15, U. S. Code.

Concise statement of judgment or order:

The judgments and sentences of May 21, 1947, whereby the following fines were imposed:

Local 36 of the International Fishermen and	
Allied Workers of America.....	\$3,000.00
Jeff Kibre.....	2,000.00
Gilbert Zafran.....	2,000.00
Charles McLaughlan.....	2,000.00
Ray J. Morkowski.....	1,500.00
Harry A. McKittrick.....	1,500.00
Clifford C. Kennison.....	10.00
F. R. Smith.....	10.00
George Knowlton	10.00
Otis W. Sawyer.....	10.00
Arthur D. Hill.....	10.00
C. Lloyd Munson.....	10.00
Robert M. Phelps.....	10.00
Burt D. Lackyard.....	10.00
W. B. McComas.....	10.00

The above named defendants and appellants, and each of them, hereby appeal to the United States Circuit Court of Appeals, for the Ninth Circuit from the above stated judgments.

Dated: May 22, 1947.

KATZ, GALLAGHER & MARGOLIS,
GLADSTEIN, ANDERSON, RESNER &
SAWYER,
KENNY AND COHN,

By /s/ ROBERT W. KENNY.

Attorneys for Defendants and
Appellants. [107]

Received copy of the within Notice of Appeal this
23rd day of May, 1947.

WILLIAM C. DIXON,

Attorney for Plaintiff.

[Endorsed]: Filed May 23, 1947. [108]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 117 inclusive contain full, true and correct copies of Indictment; Motion by Defendants to Dismiss the Indictment; Minute Orders Entered October 14 and November 12, 1946; Notice of Motion to Dismiss the Indictment and of Challenge to and Motion to Strike Out the Entire Trial Jury Panel; Minute Orders Entered March 12, April 9, April 10, April 16 and April 18, 1947; Defendants' Proposed Instructions to the Jury; Minute Order Entered May 7, 1947; Verdict; Motion in Arrest of Judgment; Motion for Judgment of Acquittal or for New Trial; Minute Order Entered May 21, 1947; Judgment and Commitment as to each of the appellants; Notice of Appeal;

Designation of Portions of the Record; Stipulation and Order re Exhibits; and two Stipulations and Orders Extending Time to File Record on Appeal which, together with Original Plaintiff's Exhibits at the hearing on the Motion to Dismiss etc. Nos. 1, 2, 3, 4-A to 4-L, inclusive, 5-A to 5-F, inclusive and 6 and Original Defendants' Exhibits at the hearing on the Motion to Dismiss etc. A to I, inclusive, J-1, J-2, K-1 to K-3, inclusive, L-1 to L-4, inclusive, M to V, inclusive, W-1, W-2, X-1, X-2, Z-1, Z-2, AA-1, AA-2, BB, CC-1, CC-2, DD-1, DD-2, EE-1, EE-2, FF-1, FF-2, GG-1, GG-2, HH-1 HH-2, and II to MM, inclusive; Original U. S. Exhibits at the trial Nos. 1, 1-C, 1-D, 2 to 41, inclusive, 47 to 61, inclusive, 201 to 220, inclusive, 224 to 228, inclusive, 230, 231, 233, 236, 238, 240, 243 to 246, inclusive, 252, 301 to 304, inclusive, 307, 310, 311, 312, 313, 314, 317, 319 to 322, inclusive, 328, 332 to 334, inclusive, 401 to 406, inclusive, 406-A, 409, 411, 413, 414, 504, 503 and 508 and Original Defendants' Exhibits at the trial A to G, inclusive, H-1 to H-4, inclusive, I-1 to I-3, inclusive, J to W, inclusive, W-1, W-2, X, X-1, Y, Z, AA, BB, CC-1 to CC-9, inclusive, DD, EE, FF, GG, GG-1, GG-2, HH to SS, inclusive and copy of 37 volumes of Reporter's Transcripts, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$31.20 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 15th day of August, A.D. 1947.

[Seal]

EDMUND L. SMITH,
Clerk,

By /s/ THEODORE HOCKE,
Chief Deputy Clerk.

In the District Court of the United States in and
for the Southern District of California, Central
Division

Honorable Peirson M. Hall, Judge Presiding
No. 18842—Criminal

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LOCAL 36 OF INTERNATIONAL FISHER-
MEN & ALLIED WORKERS, et al.,
Defendants.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS ON TRIAL

Los Angeles, California

March 18, 1947

Appearances:

For the Plaintiff: James M. Carter, United
States Attorney, Los Angeles 12, California, by

William C. Dixon and Robert J. Rubin, Special Assistants to Attorney General, Los Angeles 12, California; Benjamin F. Schwartz and Jesse R. O'Malley, Special Attorneys, Antitrust Division, Los Angeles 12, California. [28*]

For all Defendants except Defendant Sherman: Katz, Gallagher & Margolis; by Ben Margolis, Esq.; and Gladstein, Andersen, Resner, Sawyer & Edises; by George Andersen, Esq.; and Cohn and Kenny; by Robert W. Kenny, Esq.

For the Defendant Sherman: Arthur Garrett, Esq.

* * *

The Court: Very well. Ladies and gentlemen of the jury, I think before we proceed any further, my remarks to you last night probably indicated—they were intended to indicate that I might observe a custom which is not very common here of placing the jury, throughout the whole of the trial, in the custody of the marshal; in other words, to lock you up. I have come to the conclusion, in view of the length of the trial, which is estimated to be probably [48] at least a month, that I will not do so, but I have stated to counsel that in the event that anything occurs which in my judgment would indicate the necessity for that, that I would do so.

I wish, therefore, to say to each of you, that in the event any communication by anyone concerning this case is made to you or attempted to be made to you, or to any members of your family, directly or

* Page numbering appearing at top of page of Reporter's certified Transcript of Record.

indirectly, while this case is in trial, other than in this court room, that you communicate it forthwith to me through my clerk or my secretary.

Before the government makes its opening statement; I submitted to counsel yesterday what we call a form of instructions concerning the rules of evidence, which are always read at the conclusion of the trial,—let's see how many of you have never served on a jury, or who have served.

(There was a raising of hands by the jury.)

The Court: Only one of the fourteen has served on a jury heretofore. Then it might be helpful to you in advance in weighing the evidence or assisting you in the trial if I should read to you some of the general instructions of that nature.

First of all, in the trial of a law suit the one having the affirmative—and in a criminal case the government has the affirmative always—has the burden of proof. The one who has the burden of proof puts their evidence on [49] first, they call their witnesses, and they conduct an examination, interrogation of the witnesses by what is called a direct examination. That is to say, the direct examination does not ordinarily permit leading or suggestive questions, the idea being that the questions shall be asked and that the witness shall speak his mind without any suggestion from counsel. But after the party who has produced the witness is through, the counsel for the other side have a right to cross-examine that witness.

Now, those of you who have children often hear the expression among them that somebody is trying to cross them up. I think that expression probably

originated from the cross-examination of witnesses in court rooms, because in a cross-examination the counsel for the person who does not produce the witness is entitled to test their veracity by leading questions, suggestive questions, and generally to ask questions of a different nature. So if during the trial somebody asks one kind of a question and the court sustains the objection to it, you must not be concerned with that; that is a rule of evidence which I must govern.

The trial usually opens with a statement on behalf of the party having the burden of proof, which is called an opening statement to the jury, which is limited to a brief statement, without argument, of what they intend to prove, and how they intend to prove it. That is followed by a statement [50] on behalf of the defendants of a similar nature, except that the defendants can reserve their right to make what they call the opening statement until after the conclusion of the government's case. In other words, instead of making it now, why, they may want to wait until all the evidence is in and then make their opening statement.

Now, these instructions I am about to read to you will be read to you at the conclusion of the trial as heretofore indicated to you. It is your duty as jurors to follow the law as I shall state it to you, and, on the other hand, it is your exclusive province to determine the facts in the case and to consider and weigh the evidence for that purpose. And that authority thus invested in you is not an arbitrary power but must be exercised with sincere judgment, sound discretion, and in accordance with the rules

of law which I shall state to you in the instructions.

If in the instructions which I am reading to you now, or those which I read to you at the conclusion of the trial, any direction or rule or idea is stated to you in varying ways, or a subject-matter in the instructions is treated first or last, no emphasis is intended to be placed on that instruction, and none must be inferred by you, and for that reason you are not to single out a certain sentence or any individual point or any individual instruction and ignore all the others, but you have to consider all the instructions [51] together and as a whole, and to regard each in the light of all the others.

Now, evidence may be either direct or indirect. Direct evidence is that which proves a fact in dispute directly without an inference or a presumption, and which in itself, if true, conclusively establishes the fact. Indirect evidence is that which tends to establish a fact in dispute by proving another fact which, though true, does not of itself conclusively establish the fact in issue but which affords an inference or a presumption of its existence. Indirect evidence is of two kinds, namely, presumptions and inferences.

A presumption is a deduction which the law expressly directs to be made from particular facts, and unless declared by law to be conclusive—and I don't know of any conclusive presumptions that will arise in this case—a presumption may be controverted by other evidence either direct or indirect, but unless so controverted the jury is bound to find according to that presumption.

Now, an inference, on the other hand, is a deduction which the reason of the jury directs shall be drawn from the facts which are proved. An inference must be founded on a fact or facts proved and be such a deduction from those facts as is warranted by consideration of the usual propensities or passions of men, the particular propensities or passions of the persons whose conduct or acts are in [52] question, or the course of business or the course of nature. And the word "propensity" as used in these instructions means any natural or habitual inclination or tendency.

You are not bound to decide any fact or the main issue in conformity with the testimony or the number of witnesses which does not produce conviction in your mind as against the declarations of a lesser number of witnesses, or as against a presumption or other evidence which appeals to your mind with more convincing force. This rule of law does not mean that you are at liberty to disregard the testimony of a greater number of witnesses merely from caprice or prejudice or from a desire to favor one side as against the other. It does not mean that you are to decide an issue by the simple process of counting the number of witnesses who have testified, but it does mean that the final test is not in the relative number of witnesses but in the relative convincing force of the evidence.

The testimony of one witness entitled to full credit is sufficient for the proof of any fact in accordance with such testimony even if a number of witnesses have testified to the contrary, if from the whole case, considering the credibility of the wit-

nesses, and after weighing the various other factors in the evidence, the jury believes the one witness.

In weighing the testimony of witnesses it is proper for [53] you to consider those factors of human nature which, either with or without any wrongful intention, may obstruct the giving of perfectly true testimony. Those factors are suggested by these questions: Did the witnesses have a full opportunity to learn the truth? If so, did the witness have the intelligence and purpose to ascertain the facts? What was the advantage or disadvantage from the point of observation? Does the evidence show that the witness had a motive for favoring or an inclination to favor any party? Was he or she, in other words, a biased or an impartial witness? What degree of intelligence, what quality of memory, and what grade of moral purpose, so far as concerns this case, were revealed by the witness' appearance, manner of testifying, and all the other evidence in the case? Was the testimony or is the testimony reasonable and consistent within itself and with uncontradicted facts? Is there any timidity or physical handicap, lack of ability in self-expression, or other conditions that place a witness at a disadvantage or might cause his or her testimony to appear on the surface as being less trustworthy than it really was. Was the witness, without fault of his own, confused or embarrassed and thus placed in a light not truly representative?

Should you consider any of these questions, either in your own private reasoning or in open discussion after the case is finally submitted to you, if it is,

you must look [54] for an answer only to the evidence admitted in the trial of this case.

Any evidence that has been received of an act, omission or declaration of a party which is unfavorable to his own interest should be considered and weighed by you like any other admitted evidence, but evidence of the oral admission of a party other than his own testimony in this trial ought to be viewed by you with caution.

From time to time counsel for one or the other of the parties will, no doubt, interpose objections to questions or to evidence. Counsel not only have the right, but they have a duty to make any and all objections which are deemed advisable or appropriate by them, and no inference or presumption can or should be indulged in one way or the other by reason of the interposition of any objection on behalf of any counsel.

At times throughout the trial the court will probably be called upon to pass upon the question whether or not certain offered evidence might or might not be properly admitted. You are not to be concerned with the reasons for any rulings which might be made, nor to draw any inference from them. Whether offered evidence is admissible or not is purely a question of law. And in admitting evidence to which an objection might be made, the court does not determine what weight should be given to that evidence, nor [55] does it pass on the credibility of the witnesses. As to any offer of evidence that might be rejected by the court, of course you must not consider that evidence. As to any question to which an objection might be sustained,

you must not conjecture as to what the answer might be, or the reason for the objection.

The law does not require the accused to prove his innocence, which in many cases might be impossible; but on the contrary the law requires the prosecution to establish beyond a reasonable doubt and by legal evidence the guilt of any person charged. And if the government fails to so prove, you should find the accused persons not guilty.

You must not allow yourselves to be led to convict the accused in this case in order to satisfy a fear that some offense may go unavenged or unpunished, or for the purpose of deterring others from the commission of like offenses. No such argument or reason can be weighty enough to justify you in laying aside that just and humane rule of law which requires you to acquit an accused person unless every fact necessary to establish his guilt is proved to you beyond a reasonable doubt and to a moral certainty.

The rule concerning circumstantial evidence does not permit you as jurors to indulge in speculation or surmise, conjecture or guesswork, in order to supply any element of any offense alleged by a prosecuting witness or charged by [56] the government in this case to have taken place where proof of such element does not appear beyond a reasonable doubt and to a moral certainty. Speculation, surmise, conjecture or guesswork can never be submitted in lieu of proof to justify conviction of an accused person.

And suspicion is not evidence. Mere suspicion, however strong, is not sufficient to establish any

fact whatsoever necessary to constitute the crime charged. Mere probabilities are not sufficient to warrant a conviction, nor is it sufficient that the greater weight or preponderance of evidence support the allegations of the indictment. Nor is it sufficient that upon the doctrine of chance it is more probable that the accused might be guilty than innocent. The accused persons must be proven guilty so clearly that there is no reasonable theory upon which they can be said to be innocent, or he, individually, when all of the evidence is considered together. Mere opportunity of an accused person to commit a crime charged is insufficient to justify a verdict, and in every criminal case the proof must substantially correspond to the material allegations of the indictment, which, I take it, will shortly be read, or stated to you in brief by the government.

By the arrest of the defendant or by the return of an indictment no presumption whatsoever arises to indicate that a defendant is guilty or that he had any connection with or [57] responsibility for the act charged against him. A defendant is presumed to be innocent at all stages of the proceeding until the evidence introduced on behalf of the government shows him to be guilty beyond a reasonable doubt. And this rule applies to every material element of the offense charged. There is only one offense charged here. Mere suspicion, as I indicated, will not authorize a conviction, and a reasonable doubt is such a doubt as you may have in your minds when after fairly and impartially considering all the evidence you do not feel satisfied to a moral certainty of the defendant's guilt. In

order that the evidence submitted shall afford proof beyond a reasonable doubt it must be such as you would be willing to act upon in the most important and vital matters relating to your own affairs. Reasonable doubt is not mere possible or imaginary doubt, nor is it a bare conjecture, for it is difficult to prove anything to an absolute certainty.

You are to consider the strong probabilities of the case, and a conviction is justified only when sufficient probabilities exclude all reasonable doubt as the same has been defined to you.

Without it being restated or repeated to you again, either now in this part of the trial or subsequently in the final instructions, you are to understand that the requirement that a defendant's guilt be shown to be beyond a [58] reasonable doubt is to be considered with and accompanying each and every instruction which might be given to you.

In judging evidence you are to give it a reasonable and a fair construction, and you are not authorized, as I indicated, because of any feeling of sympathy or bias, to apply a strained construction, one that is unreasonable, in order to justify a certain verdict or conclusion, when were it not for such feeling or bias you would reach a contrary conclusion. And whenever after a careful consideration of all of the evidence your minds are in that state where a conclusion of innocence is indicated equally with a conclusion of guilt, or there is reasonable doubt in your minds as to whether or not the evidence is so balanced, the conclusion of innocence upon such occasion must be adopted.

You are the sole judges of the credibility and the weight which is to be given to the different witnesses who might be called upon to testify in this trial, or upon the documentary evidence which might be produced. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies, by the character of his testimony, or by evidence affecting his character for truth, honesty and integrity, or by his motives or by contradictory evidence. In judging the credibility of the witnesses who might be called, you may believe the whole or any part of the evidence of any witness, or you may [59] disbelieve the whole or any part of it as may be dictated by your judgment as reasonable men and women. You should carefully scrutinize the testimony given, and in so doing consider all the circumstances under which the witness testified, his demeanor, his manner while on the stand, the intelligence of the witness, and the other things that I have outlined to you, as well as the relation which the witness might bear to the government or to any of the defendants, the manner in which a witness might be affected by the verdict, and the extent to which the witness might be contradicted or corroborated by other evidence, if at all, and every matter that tends reasonably to shed light upon his testimony and his credibility.

If a witness is shown knowingly to have testified falsely on a trial touching any material matter you should distrust his testimony in other particulars, and in that case you are at liberty to disregard and reject the whole of that witness' testimony.

The defendants may or may not offer themselves as witnesses in this case. If they do not, you are not to draw any inference or presumption concerning their not taking the stand. In the event a defendant does take the stand, you are to estimate and determine the credibility of the defendant in the same manner as you would consider the testimony of any other witness, and it is proper to consider all the [60] matters that have been suggested to you in that connection, including the interest which the defendant has in his own case, his own hopes and his fears, and what he might have to gain or lose as the result of any verdict.

You are not limited in your consideration of the evidence to the bald expression of any witness; you are authorized to draw such inferences as I have defined an inference from the facts and circumstances which might be proved as seem justified in the light of your experience as reasonable men and women. [61]

* * *

Opening Statement in Behalf of the Government

Mr. Dixon: Ladies and gentlemen of the jury, as his Honor has already indicated, it is now the privilege of the Government to make to you its opening statement, the purpose of which is to tell you something about this case and what the Government expects its witnesses and evidence to show.

Now, as you have probably already surmised, this case does involve the fishing industry. The fishing industry, however, of the west coast of our country

is a large industry, and in this case we are going to be concerned only with a portion of that industry, namely, that which relates to the catching and selling of fresh fish in the ports of Southern California from Morro Bay down to the waters of Mexico. The fish involved in this case are of that character which is caught and sold to dealers who, in turn, process them, filet the fish, and prepare them for sale to wholesalers and retailers in the area and for shipment outside the state of California to various other portions of our country.

Now this case does not involve, therefore, the canning part of the fishing industry, which is an entirely separate and different part of the fishing business, but as I have suggested it is confined to the fresh fish portion of the fishing industry in the southern portion of the state of California.

Now this industry, during an annual period of time, [62] covers the catching and selling of approximately 20 million pounds of fresh fish. That is to say, that amount of fish is caught generally outside the territorial waters of the United States in fishing boats and brought into the ports within the area that I have described, which includes the area from Morro Bay to the Mexican waters, and those ports in that area, the principal ones of which are the ports of San Pedro, San Diego and Newport Beach.

Now there are other ports into which the fish are brought in this area, namely, Santa Barbara, Santa Monica, Redondo, and Morro Bay. The bulk of the fresh fish involved in this case, however, is caught,

as I suggested, outside the territorial waters of the United States, and is brought into those various ports and at those ports it is sold to dealers who handle the fish, that is, they process the fish, handle it by icing and fileting the fish and then reselling the fish to wholesalers or dealers or consumers within and outside the state of California.

There is also about a million pounds of fresh fish which is shipped into this area from outside the state of California, and that will be referred to during the course of this trial as shipments of fish from the states of Washington and Oregon into the area that you will become more familiar with as this trial progresses.

Now the action here, as his Honor has already indicated, [63] is in the nature of an indictment, which merely states the charges made here by the Government against the defendants and details the charges. It is, of course, not evidence as his Honor has already instructed you.

Now we have in this case some 15 individual defendants and an association, that is, an unincorporated association, which is known as Local 36 of the International Fishermen & Allied Workers of America. Seven of the individual defendants in this case, namely, the defendants Kibre, Zafran, Kennison, McKittrick, Munson, McLauchlan and Morowski, are officials of that particular association. The other individual defendants are better described in the indictment as fishermen and also as chairman, for example, as is the case of Mr. Smith, of the strike committee, member of the

strike committee Mr. Knowlton, Mr. Sawyer as a picket captain, the defendant Phelps as a member of the negotiating committee, the defendant Lackyard as a member of the negotiating committee and strike picket captain.

Now that description is merely indicative of their connection with the association and the activities that I will refer to more in detail in a moment.

Now of course the term "fisherman" is a broad term because lots of people like to call themselves fishermen if they go out and fish purely for their own personal pleasure. Fishermen as used in our case, and as the evidence will be submitted [64] to you in connection with the allegations made in this indictment, refers to an individual or a group of individuals who own, lease or operate a particular boat for the purpose of engaging, on their own account, in the business of catching fresh fish and bringing them to the ports that I have described for the purpose of sale to the dealers.

Now the defendant association here is composed, we expect the evidence to show, of fishermen in that sense of the term. In other words, the indictment charges them with being independent businessmen engaged in business on their own account and who operate fishing boats for their own account and profit.

The indictment further alleges that the fishermen who are members of this defendant association, which calls itself Local 36 of the International Fishermen & Allied Workers of America, are not

employees, workers or laborers who receive a salary or wage for their work or labor, but, as I suggested, are rather independent businessmen engaged in the business of catching and selling fish for their own account and profit.

The indictment further alleges that after the fish are caught by the fishermen, members of the association, that they sell their catch, that is, whatever they catch when they go out to fish, that they sell it directly to the dealers and they do not in any sense of the term act collectively through this association that I have named in the catching, producing, preparing for marketing, processing and handling their catch. [65]

Now I have suggested that to you because we believe the evidence will clearly show that the defendant association here, this Local 36, the membership of that association, is composed principally of fishermen in the sense that I have described the term who are engaged in business on their own account and who, after they have caught the fish that they go out to catch, bring that into the ports involved in this case and sell it directly to the dealers or the persons who then proceed to process the fish and make it available for the wholesalers or the retailers or who ship it thereafter from the points at which they buy it from the fishermen to not only points inside the state of California but also to various points outside the state of California.

Now with that background of the fishing industry, the defendants here, not only this association but also the individuals named, are charged with

having been engaged, beginning some time prior to May, 1946, the exact date being unknown to the grand jury, in a wrongful and unlawful combination and conspiracy, formed and carried out in part within the southern district of California, central division—that is in this district in which this case is being heard—and this is the conspiracy that the defendants are charged with being engaged in: to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of the fresh fish caught in the fishing area; and in [66] addition to that, to prevent the dealers who do not agree to pay the prices so fixed by the members of the combination and parties to the conspiracy from obtaining, selling or shipping any fresh fish from any other source.

In other words, the defendants here, as members of this association and the association itself, are charged with having been engaged in a combination and conspiracy to fix the price at which they would sell the fish to the dealers and then in addition thereto to force, or rather prevent, the dealers who did not agree to pay that price agreed upon by the defendants in this conspiracy, from getting or obtaining fish from any other sources.

That is the broad and general charge that is made by the Government here and which we expect the evidence will prove to be the combination and conspiracy in which the defendants engaged in this case.

The indictment then proceeds to go on in detail to show what the particular provisions or more de-

tailed nature of this conspiracy really was, and it charges that the defendants agreed to fix a minimum price for the fish to be sold by the fishermen to the dealers, and then that where the OPA had fixed a price—and this was back in 1946, before the OPA went out of existence—that that price would be the principal price at which the fishermen would sell their fish to the dealers, and that in the event the OPA ceilings were removed [67] that then that OPA price would be the floor or the lowest price at which the fishermen members of this association would sell their fish to the dealers.

And then the defendants are further charged with having agreed to reduce this price-fixing agreement that I have referred to to a contract form, and a copy of that contract is affixed to the indictment and I shall refer to it in a moment, and to thereafter impose that contract upon the dealers or the buyers of their fish by picketing and boycott methods and to prefer——

Mr. Kenny: I must interrupt at this time and ask the Court to instruct the jury to disregard the remarks of counsel about picketing and boycott methods, and cite it as misconduct on the part of the prosecution.

I would like to be heard at length on the law unless your Honor agrees with me.

The Court: If it is alleged in the indictment——

Mr. Dixon: I would suggest counsel read the indictment, because I am referring to paragraph 13(f) on page 7, and if there is any question in your mind about it, counsel, I will read it.

Mr. Kenny: I will concede it is in the indictment, but it is not an offense against the Sherman Act.

The Court: The objection is overruled.

Mr. Dixon: Since counsel has referred to the fact, I [68] will read the allegation that I was about to summarize in the interests of brevity.

The Court: On that point, I have heard counsel at length on whether or not the indictment states an offense, and if he confines himself in his opening statement to the indictment, either the language of it or what he expects to prove under it, that matter has been settled.

Mr. Dixon: I will read this particular portion of the indictment, and this is what the Government charges, among other things, that the defendants agreed to do in this conspiracy——

The Court: Just a moment.

Juror Patrick: Your Honor, may I ask, is there any objection if we take notes as we go along in this case? Any objection to that?

Mr. Margolis: We have no objection.

The Court: There will be no objection if it will aid the individual jurors. I have never followed the practice, but if the parties have no objection to any juror taking notes——

Mr. Margolis: I think we might have an appropriate instruction at the end of the case as to how the notes would be used, but we have no objection to the use of notes.

The Court: Does the Government have any objection to the use of notes? [69]

Mr. Dixon: We have no objection, your Honor, if the jurors wish to do it. It is rather an unusual practice, I will say.

The Court: Yes, it is an unusual practice, and you are liable to find yourself with so many notes that it might be more confusing in the long run than it would be otherwise. However, none of the parties object to it so if you desire, you may.

In that connection, it must be remembered that the reporter's transcript is the official transcript of what transpires and that should recurrence be made at any time or reference to what did transpire, it is the reporter's transcript which must govern over the notes.

Mr. Garrett: May the jury be cautioned at this time, if notes are taken, that the opening statement of the lawyer for the Government is not evidence?

Mr. Andersen: We join in that request, your Honor.

The Court: The jury is cautioned that the opening statement of the lawyer for the Government is not evidence, and the opening statement of the lawyers for the defendants is not evidence, and statements made by the counsel during the trial are not evidence.

Mr. Dixon: May we proceed now?

The Court: Go ahead.

Mr. Dixon: Section (f) of Paragraph 13 charges that the [70] defendants:

“(f) agree to reduce the foregoing agreement and understanding described in Paragraph 13(a) to (e), inclusive, to written contract form, and to

impose said contract upon fish dealers who refuse to sign the same by picketing and boycott methods, and to prefer fish dealers who sign said written contract, and to refuse to sell or deliver any fish caught by fishermen members of Local 36, IFAWA to fish dealers who do not enter into said contract;”

Then the indictment further charges that the defendants:

“(g) agree to prevent fish dealers who do not enter into said agreement and contract from securing any supply of fresh fish or crustaceans from any other fishermen or other source by boycotting and establishing picket lines around the places of business of such dealers;”

And to further:

“(h) agree to prevent fish dealers who do not enter into the aforesaid agreement and contract from shipping or otherwise transporting through their own or other means of transportation any fish purchased or acquired by said dealers;”

And then to:

“(i) agree to boycott and picket any concern [71] or individual accepting from dealers who do not enter into said written contract, any fresh fish or crustaceans for shipment from said fishing ports to points in or outside the state of California;”

Further the indictment charges the defendants (I am reading Section (j) of Paragraph 13):

“(j) agree to boycott and picket any concern or individual delivering or attempting to deliver to the usual place of business of non-signing dealers,

any fresh fish or crustaceans shipped to the usual place of business of such non-signing dealers, by brokers or other dealers located in and outside the state of California;”

I mention that because we expect the evidence here will show that the defendants endeavored to, and did, prevent the dealers in the areas described from securing any fish from outside sources that I have referred to, the states of Washington and Oregon; and then they further:

“(k) agree to prevent fishermen who are not members of Local 36, IFAWA, from fishing and delivering any fresh fish or crustaceans caught by said fishermen to anyone other than a dealer signing the aforesaid written contract and only to such dealer after said non-member fishermen had picketed non-signing dealers, or in lieu thereof, [72] had paid to Local 36, IFAWA, a stipulated picket fee.”

In other words, we expect the evidence will show under that allegation that other fishermen who were not members of this defendant association were prevented from fishing without getting a clearance card from the defendant association to permit them to fish, and then after they got the clearance card, which they could only get after they had paid a picket fee to the defendant association, or in lieu thereof had performed picket duty, they could sell then the fish that they caught only to the dealers who signed the contract that I have mentioned.

Now that, in general, is the charge made here in this indictment against the defendants, and we ex-

pect the evidence will show that as a result of this conspiracy the defendants entered into to fix the prices at which they would sell their fish to the dealers, and that on or about May 27, 1946, the defendant association notified the dealers that unless the form of contract, which is attached to the indictment and, as I suggested, I will refer to it in a moment, was signed by the dealers by May 28, 1946, no fish of any kind would be brought into the port of San Pedro starting 7:00 a.m. Wednesday, May 29, 1946, and that on and after that date the defendant association picketed and caused to be picketed the places of business of fish dealers located particularly in the ports of [73] San Pedro and Newport Beach who refused to sign the form of contract that I have mentioned, attached to the indictment, and further that they prevented the fish dealers from obtaining their normal supply of fresh fish from any other source, and that the defendant association notified the Railway Express Agency, Inc., that said company would be picketed by the members of the defendant association if the Railway Express Agency, Inc., accepted any fish from any San Pedro dealer for shipment to destination points in or outside the state of California where such dealer had not signed a contract with the defendant association, which contained the provisions set forth in the form of a contract attached to the indictment.

Now I am going to refer briefly to this contract that I have described generally. It is, as I suggested, attached to the indictment and will of course be introduced in evidence in this case.

This contract provides generally for the fixing of the prices at which the individual members of the association will sell their fish that they catch to the dealers who sign the contract, and it is, as I suggested, the OPA price that was taken as the price where there was an OPA price in effect at that time, and if the OPA price was removed then the former OPA price was to be the floor price, that is, no fish was to be sold below that price by any of the members of this association to any of the dealers, and it contains the provisions [74] I mentioned giving a preference to the dealers who bought from the members of the defendant association, and the contract also provides that the payment by the dealers who signed this contract and buy fish from the members of the association pursuant thereto shall be made directly to the individual fishermen who sell the fish.

Paragraph (d)(7) of the contract specifically states that "It is distinctly understood and agreed that the union (that is this Association Local 36 of the International Fishermen & Allied Workers of America) assumes no liability of any kind under the terms of this agreement, but is acting merely as a bargaining agency for its members."

Now we expect, ladies and gentlemen of the jury, that the evidence will sustain in every substantial particular the allegations of the indictment concerning the charges herein made against the defendants, and that the evidence will show that this defendant association, the membership thereof, was composed principally of fishermen who owned and

operate their own boats for their own account and profit. Some of them have on occasions taken two or three other members of the association with them when they go out to fish who do not have an interest in the boat perhaps, and those men who go out under those circumstances receive a share of the catch, that is, the proceeds from the sale of the catch, as their part of the venture when they go out to fish with the members of the association [75] who own, lease or control the boats which they are using in this enterprise.

Now the evidence in this case further will show that about 75 per cent of the fishermen in the area involved, using the term "fishermen" in the sense that I have described, and confining it to the fresh fish portion of the industry, are members of the defendant association.

Now the type of evidence which we expect to introduce to you to support the allegations herein made that the defendants have engaged in a combination and conspiracy to fix and determine the price at which the individual members of the association will sell their fish to the dealers within the area described, that the evidence will consist of two types: it will consist of testimony of witnesses who will testify concerning things and allegations that I have referred to; it will also, as has already been suggested by his Honor, consist of documentary evidence which will indicate and support the allegations and statements that I have made.

And upon that type of evidence, which we submit will support the charges made by the Government

in this case, we will ask you, after a full and fair and impartial hearing of all the evidence, to return a verdict here as is requested by the Government of guilty as to all defendants.

The Court: I see it is 5 minutes of 12:00 now. Do any of the defendants wish to make his statement before the evidence [76] begins or do you desire to reserve your opening statement? [77]

* * *

WAYNE B. CAVE

called as a witness by and in behalf of the government, having been first duly sworn, was examined and testified as follows:

* * *

The Court: And may it now be stipulated that all the arguments made and briefs filed heretofore in connection with that matter may be deemed to have been made and filed at this time?

Mr. Dixon: So stipulated.

Mr. Garrett: So stipulated. [83]

Mr. Margolis: So stipulated.

The Court: And considered by the court. The objection is overruled. Proceed.

Direct Examination

By Mr. Rubin:

Q. With what organization are you employed, Mr. Cave? A. The Los Angeles Times.

Q. As a newspaper reporter, what locale is assigned to you as the base of your duties as a reporter?

(Testimony of Wayne B. Cave.)

A. The Harbor Area; Los Angeles and Long Beach Harbor.

Q. Are you the marine editor of that area?

A. Yes.

Q. Now on the 29th day of May, 1946, were you at the Los Angeles Harbor? A. Yes.

Q. In the morning of that day at what part of the Harbor were you?

A. Well, I was in the press room until I got word there was a picket line——

The Court: What day is that, counsel?

Mr. Rubin: On the 29th day of May, your Honor.

The Court: 1946?

Mr. Rubin: 1946.

The Court: Very well.

The Witness: I got word there was a picket line at the [84] wholesale fish markets.

Mr. Margolis: I move to strike that portion of the answer referring to a picket line on the ground that it is incompetent, irrelevant and immaterial to any issue in this case.

The Court: It is not responsive to that particular question. He asked him where he was, and he said he was in the press room. The rest of the answer will be stricken and the jury instructed to disregard it on the ground that it is not responsive and hearsay.

Q. (By Mr. Rubin): Where did you proceed from the press room?

A. I got in my automobile and took my camera and went down to the wholesale fish market.

(Testimony of Wayne B. Cave.)

Q. Is that the wholesale fish market in San Pedro? A. In San Pedro.

Q. Is that market known as the Municipal Fish Wharf? A. Yes.

Q. Or Municipal Pier? A. Yes.

Q. What time of the day did you arrive there?

A. I don't recall. I think probably it might be around noon. I can't state.

Q. What did you see when you arrived at the municipal fish pier in San Pedro? [85]

A. I saw a number of men marching in column on the land side of the municipal market sheds, and later I saw a boat under way on the water side of the sheds.

Mr. Margolis: I was waiting until the witness completed the answer. Is the answer completed?

The Witness: I beg your pardon?

Mr. Margolis: Is the answer completed? I didn't want to interrupt your answer.

The Witness: I was through then; yes.

Mr. Margolis: Your Honor please, I move to strike the answer on the ground that it is incompetent, irrelevant and immaterial, and not related to any issue in this case.

The Court: Overruled. [86]

* * *

Q. (By Mr. Rubin): What were these men doing on the landward side, Mr. Cave?

A. Walking back and forth.

Mr. Margolis: I move to strike the answer on the same ground.

(Testimony of Wayne B. Cave.)

The Court: Motion denied.

Mr. Andersen: Also on the further ground, if I may add, that there is no showing that it is in any way related [87] to any of the defendants.

The Court: Motion denied.

Q. (By Mr. Rubin): What did you do at that time after you saw these men walking up and down?

A. I set my camera and took a picture of the men walking up and down on the land side of the sheds.

* * *

The Court: Do you have two photographs there?

Mr. Rubin: Yes, your Honor.

The Court: Hand them to the clerk——

* * *

The Court: O.K. We will get to that. Are you listing your other list of documents beginning with serial number 1? [88]

Mr. Rubin: Yes.

The Court: We will call these 1-A and 1-B, then. And if you will hand them to defense counsel before exhibiting them to the witness we may save more time.

* * *

The Court: Those are the negatives that you handed counsel?

Mr. Rubin: Those are the negatives. The record will show that the two documents designated 1-C and 1-D, for identification, are two envelopes,

(Testimony of Wayne B. Cave.)

on the outside of which appears a news photograph, and inside the envelopes are contained one negative each in each envelope. [89]

* * *

Q. (By Mr. Rubin): Mr. Cave, I show you what has been marked as Exhibit 1-C and 1-D, for identification. First taking 1-C for identification, would you look at that exhibit and tell the jury what it is?

A. That is a negative of a picture I took on the 29th of May showing a scene on the water side of the wholesale fish markets with a number of purse seine boats. And in the foreground a motor boat or cabin cruiser with a sign on the front of it.

Q. And on the face of the envelope designated 1-C, for identification, what appears?

A. A print of the same picture.

Q. And is that one of the pictures that you took on the morning of May 29th? A. It is.

Q. I now show you an envelope marked Government's Exhibit 1-D, for identification, and calling your attention to the negative film contained therein, I ask you to tell the jury what that negative is.

A. That's another picture I shot May 29th on the land side of the wholesale fish markets showing men carrying placards. [90]

Q. What appears on the envelope itself which is marked Government's Exhibit 1-D, for identification?

A. That is a reprint of the negative that appears in a news print.

(Testimony of Wayne B. Cave.)

Q. Is that a photograph that you took on May 29th of the fish pier or wharf? A. It is.

Q. I call your attention to Government's Exhibit 1-A, for identification, and ask you to state what that purports to represent?

A. That is an enlarged print of the Exhibit 1-D negative that I shot on May 29th from the land side of the municipal fish wharf.

The Court: That is a print of one of the negative that you have just identified?

The Witness: Yes, sir.

The Court: Which one?

The Witness: 1-D.

Q. (By Mr. Rubin): And calling your attention to Government's Exhibit 1-B, for identification, I ask you to state what that purports to be.

A. That is an enlarged print of the negative listed here as Exhibit 1-C, a picture I took on the seaward side of the municipal fish wharf on May 29th last year.

Mr. Rubin: At this time, if your Honor please, the [91] government offers in evidence as Government's Exhibit 1 the document heretofore marked Government's Exhibit 1-A, for identification.

Mr. Andersen: To which we object on the ground heretofore stated, your Honor. [92]

* * *

The Court: Do you offer the other one too?

Mr. Rubin: I offer, as Government's Exhibit No. 2, if your Honor please, the document heretofore marked Government's Exhibit 1-B for identification.

* * *

(Testimony of Wayne B. Cave.)

Mr. Andersen: Pardon me. Is your Honor changing the numbers?

The Court: Yes.

Mr. Andersen: 1-A becomes 1 and 1-B becomes 2?

The Court: That is right.

Mr. Andersen: And 1-C becomes 3 and 1-D becomes 4?

The Court: He hasn't offered those yet. [93]

Mr. Rubin: At this time the Government offers into evidence the documents heretofore marked Government's Exhibit 1-C for identification, and it may be stipulated that the printed material appearing on the bottom of the photograph appearing on the envelope of such document may be deemed not part of the exhibit, and in so far as the Government is concerned may be physically obliterated.

Mr. Andersen: We see no necessity of even offering them.

The Court: They have made no objection on the ground that there is no foundation laid for the photographs, and those are merely prints of those negatives. They can remain here and be marked for identification. [94]

* * *

The Court: I understand. I do not think the Government is trying to convict the defendants here of picketing. But there is no use of discussing a proposition such as this before the jury because I might make some remark on the law that might prejudice one side or the other. Let it be sufficient

(Testimony of Wayne B. Cave.)

to say at this time that I now overrule the objections and will admit the two photographs in evidence as Exhibits 1 and 2.

(The documents referred to were received in evidence and marked Government's Exhibits Nos. 1 and 2 respectively.)

Mr. Rubin: Let the record show that Government's Exhibits 1 and 2 are now being presented to the jury for their inspection.

(Exhibiting documents to jury.)

Mr. Rubin: Your witness.

Mr. Andersen: No questions. [97]

* * *

ARTHUR WEBSTER ROSS

called as a witness by and in behalf of the Government, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Rubin:

Q. What is your business or occupation, Mr. Ross? A. Fish merchant.

Q. How long have you been so engaged?

A. Since 1927.

* * *

Q. Where is your place of business, Mr. Ross?

A. On the Municipal Fish Wharf in San Pedro.

Q. Have you been engaged in the business of fish merchant at that location ever since the period of time you mentioned?

A. Continuously since 1927.

(Testimony of Arthur Webster Ross.)

Q. What is the nature of your operation there?

A. To buy and receive fish at the wharfside, that is, the seaside; to buy and receive fish from outside points in the state of California, and outside of the state of California.

Q. Now when you refer to the seaside of the pier you are referring to the wharf at which the boats dock, is that correct?

A. That is correct.

Q. Very well. Then for the purpose of this examination we will refer to the seaside where the boats dock as the wharf, and the landside as the dock.

Now from whom do you purchase fish on the wharf, that is, the seaward side?

A. On the seaward side from fishermen. [99]

Q. Approximately how many fishermen do you purchase fish from, if you know?

A. Approximately 40, 50 boats.

Q. With whom do you negotiate for the purchase of fish from the fishermen?

A. With the captain or owner, or the man in charge of the boat who might be able to speak English in the event that the captain does not speak English.

Q. In other words, an interpreter for one of those? A. An interpreter for that captain.

Q. I see. As to the fish that is brought in on the wharf, do you purchase or negotiate with anyone other than the boat owner or operator or the interpreter for him or them? A. No, sir.

(Testimony of Arthur Webster Ross.)

Q. Where are these negotiations consummated?

A. Where the boat is tied up, generally, at the wharf.

Q. Now——

A. Or the captain may come into our place of business.

Q. Will you tell the jury in your own words generally what happens when a boat comes to the wharf and you have to decide whether or not you are going to buy fish from it, will you state generally the method of transaction from the time the boat appears at the wharf until the sale is consummated?

Mr. Garrett: Objected to as irrelevant.

The Court: Overruled. [100]

The Witness: First I have to know what fish we have on hand in our own place of business; second, I contemplate how many standing orders we have for that day's business; third, I figure what fish we may expect to ship without order. With that in mind we go out to the wharf and negotiate with the captain for whatever we think we may need.

Q. (By Mr. Rubin): And do you always buy fish from the captain or the boat that appears with fish?

A. Not necessarily.

Mr. Garrett: Same objection.

The Court: Same ruling.

Q. (By Mr. Rubin): Is there any record made of the amount of fish that you purchase from the captain or the boat owner?

(Testimony of Arthur Webster Ross.)

A. Yes, sir; there is an official record on the fish and game book in triplicate.

Q. Do you own or operate any boats of your own out of San Pedro or elsewhere?

A. No, sir.

Q. Do you employ anybody to operate any boats for you? A. No, sir.

Q. Do you lease any boats—

A. No, sir.

Q. Do you lease any boats from whom you purchase fish? A. No, sir. [101]

Q. Do you employ in your place of business any captain or any boat or any boat operator?

A. No, sir.

Q. You have been in the business since 1927, I believe you said—is that correct?

A. That is correct.

Q. I see. During the war years do you know whether or not there were OPA ceilings on the various prices of fish under the Emergency Price Control Act? A. Yes, sir.

Q. What species of fish were covered by that Act in your knowledge as a fish purchaser? [102]

* * *

The Witness: Barracuda, halibut, sea bass; that is to say, California sea bass, Mexican sea bass, otherwise known as Mexican totouva; corbina, the tuna family, including blue fin tuna, yellow fin tuna, yellow tail, bonita, rock bass, corbina, king fish. That covers the majority of the local—

The Court: The majority? Not all of them?

(Testimony of Arthur Webster Ross.)

The Witness: To my knowledge.

Q. (By Mr. Rubin): Can you tell us to your knowledge what species were excluded from the OPA ceiling, if any?

A. Mackerel, smelt, pompano, anchovies, sculpin, perch—black and blue and white. I think that would cover the bulk of them.

Q. Mr. Ross, in your functioning there on the fish pier as a fish merchant, do you buy fish for canneries?

Mr. Garrett: Same objection, immaterial.

The Court: Overruled.

The Witness: No, sir. [103]

* * *

Q. What type of market do you buy the fish for?

A. For the fresh fish market.

Q. Now, with respect to the species of fish that were just enumerated by you, are any of those species included in the type of fish that you purchase for the fresh fish market?

The Court: Which one? He enumerated two types of fish.

Mr. Rubin: All of them, if your Honor please.

The Court: Either included or excluded?

Mr. Rubin: That is correct. All the species of fish that you have enumerated, whether they were under the ceiling or not.

The Court: The question is whether or not they were purchased—used in the fresh fish market?

Mr. Rubin: Whether or not he purchases these species of fish for sale in the fresh fish market.

(Testimony of Arthur Webster Ross.)

The Witness: All of those species I mentioned are for sale in the fresh fish market.

Q. (By Mr. Rubin): I see. Do you know whether or not prior to the lifting of all controls on food, whether or not [104] there was a suspension order as to fish in 1946?

Mr. Garrett: Objected to as incompetent.

The Court: Overruled.

Mr. Andersen: We join in the objection, your Honor.

The Witness: OPA regulations——

The Court: Go ahead.

The Witness: OPA regulations were suspended on May 20, 1946, for a period of 90 days.

Q. (By Mr. Rubin): Were there any species of fish that were excluded from that suspension?

A. Yes, sir.

Q. What were those species?

A. The tuna family and the pilchard family.

Q. On the 20th of May did you have a conversation with any of the defendants in this case?

A. Yes, sir.

Q. With what defendant or defendants?

A. On May 20th?

Q. On May 20th.

A. On May 20th I had a conversation with Mr. Gilbert Zafran.

Mr. Rubin: May I ask the court to have Mr. Zafran stand?

(The defendant Zafran stood up.)

(Testimony of Arthur Webster Ross.)

The Court: Is that Mr. Zafran?

The Witness: Yes. [105]

Q. (By Mr. Rubin): Where did this conversation take place?

A. In my small office on the floor of the market.

Q. Who was present at that conversation?

A. My own secretary was there.

Q. What is your secretary's name?

A. Hobart Pitt.

Q. Was anyone else present?

A. There were three or four other gentlemen along with Mr. Zafran.

Q. Do you recognize any of them in the court room this morning?

The Court: Is this morning?

The Witness: I remember Mr. McKittrick.

* * *

Q. (By Mr. Rubin): Was Mr. McKittrick there?

A. I believe Mr. McKittrick accompanied Mr. Zafran. [106]

* * *

Q. You don't recall anyone else, nor do you recognize anyone else who was in the court room.

Mr. Ross, will you state to the court and jury the conversation that occurred on May 20th in your office between yourself and these other gentlemen?

Mr. Garrett: Objected to on behalf of the defendant Sherman as incompetent, irrelevant and immaterial, no proper foundation laid as to the defendant Sherman.

(Testimony of Arthur Webster Ross.)

Mr. Rubin: If your Honor please, that gives rise to this evidentiary question which we might as well settle at the outset of the case, because there will be——

The Court: Will this be extended? If it will, we should make it in the absence of the jury.

Mr. Rubin: I don't think so. I think it is a common principle of law. The suggestion that I was going to make is that this evidence go in, if it is admissible against any of [107] those who are charged here as co-conspirators, and then at the conclusion of the government's case should certain of the defendants not be tied into the conspiracy, of course, it would be subject to a motion to strike.

That is the most orderly procedure, otherwise you are going to have to enumerate and name each particular defendant as each bit of evidence goes in. That is the customary way, as I understand it, that these conspiracy trials are handled, and it is certainly the most expeditious. Mr. Garrett's client can certainly reserve the right as strike any and all of the testimony in the event he isn't tied into the offense charged. [108]

The Court: I think perhaps that would be true. Otherwise it would prolong the trial and probably create confusion which would not aid in a decision of the case.

Mr. Andersen: We join in the objection, your Honor.

The Court: Let me hear it.

Mr. Andersen: The Government in its opening

(Testimony of Arthur Webster Ross.)

statement made a 30-minute oration about what they expected to prove and possibly the manner in which they wish to prove it, and it is true, as a general proposition, that in offering evidence in such a manner as this, that the order of proof is discretionary with the Court, and one need not start with A and uniformly go through B, C, D, etc. But if the Government wants to take advantage of a method of procedure they can start in at any point and build a crazy-quilt case and through that pretext, may it please the Court, put into evidence a great many matters that do not belong in evidence and should not be admitted into evidence.

Now if your Honor will look at the complaint, the indictment——

The Court: This is admissible against the defendants named, and the sole question is not whether it is being offered merely as a pretext and not admissible, but whether it is admissible at this time against the other defendants, subject to a motion to strike.

Mr. Andersen: Yes. That is part of the point I want to [109] make, may it please the Court.

There is no corpus delicti, and he is simply starting in at the letter L in the alphabet in order to introduce his proof. It has no relevance to the main pattern, it has no relevance to the indictment itself; it is simply some evidence that he has picked at random, may it please the Court, and to introduce it at this time rather than to introduce it in an orderly way.

(Testimony of Arthur Webster Ross.)

I submit that if the United States Attorney with the evidence available would proceed in an orderly fashion, first establishing the corpus delicti and then continuing through, that that should be done. It is only when, due to some force of circumstance that prevents them from doing that, that the Court should permit him in the Court's discretion to vary from the usual method of proof.

I see no reason here why the District Attorney can't follow the normal method of proof, and so with this witness. He starts in to ask a question about a conversation on May 20th. The charge in the indictment before your Honor is that the parties entered into an agreement to regulate prices. That is the only charge that we have before your Honor.

The Court: I think if counsel in making their objections hereafter will merely state them and not argue them on both sides that it will be better.

Have you stated your grounds? [110]

Mr. Andersen: Yes, your Honor; both points.

The Court: The objections are overruled, subject to a motion to strike.

Mr. Garrett: Now, if your Honor please, in view of your Honor's ruling, may I ask that the jury be instructed that so far as defendants not named the testimony as to conversations with other defendants is not admissible against those defendants not named and that the jury should disregard it?

The Court: I have just made my ruling on the matter, that it is admissible in evidence and ad-

(Testimony of Arthur Webster Ross.)

mitted into evidence generally. That means as against everybody, subject to a motion to strike. If it is not connected up with your client, I have not the slightest doubt but what you would make the motion to strike the evidence, in which event it will cast a greater burden on me, but the burden will be nevertheless upon me to determine whether or not it has been connected up with your client or any of the other defendants than those immediately named in the conversations.

Mr. Garrett: Would I be going too far if I asked the Court then to instruct the jury that evidence as to defendants not named is to be regarded as evidence as to them only when, as and if connected up?

The Court: I thought that I just covered that in my statement.

Mr. Garrett: I am sorry. [111]

Q. (By Mr. Rubin): Now, Mr. Ross, will you relate to the Court and jury the conversation that you had in your office on May 20th?

* * *

A. Mr. Zafran handed me a contract.

Q. Mr. Zafran handed you a contract. What was said at the time he handed you such contract?

A. I said that I could not sign that contract.

* * *

Q. (By Mr. Rubin): What was said by any person there at the time the contract was handed to you, Mr. Ross?

(Testimony of Arthur Webster Ross.)

A. I personally said that I could not sign the contract.

Q. Now I show you what has been marked as Government's [112] Exhibit No. 3 for identification.

* * *

I ask you if you have ever seen that document before.

A. This is the document. This was the document that was handed to me.

Q. By whom? A. By Mr. Zafran.

* * *

Q. (By Mr. Rubin): What did you tell Mr. Zafran when he handed you this document?

A. That I could not sign that contract.

Q. Did you say anything else to him?

A. For the reason that at one time we were given, my company, the American Fisheries Company, was given a cease [113] and desist order by the Federal Trades Commission in the matter of trying to fix prices.

Q. How long ago was that?

A. Between the years 1938 to about 1940.

Q. What was said by anybody else at that conference after you made that statement?

A. When I said that I could not sign that contract, Mr. Zafran said that ways and means would be found to compel us to sign that contract.

Q. Did he say anything else? A. No, sir.

Q. Did you sign the contract at that time?

A. I did not.

Q. Did you sign the contract at any other time?

A. I did not.

(Testimony of Arthur Webster Ross.)

Mr. Rubin: At this time, if your Honor please, the Government offers Government's Exhibit No. 3 for identification into evidence as Government's exhibit next in order.

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial, no foundation laid as to the defendant Sherman.

The Court: The objection is overruled, subject to a motion to strike. It will be admitted into evidence as Government's Exhibit No. 3.

(The document referred to was received in evidence and marked Government's Exhibit No. 3.) [114]

The Court: Let me ask this witness a question. Nobody else said anything? Zafran didn't say anything when he came in, or this other fellow?

The Witness: Oh, just general conversation.

Q. (By Mr. Rubin): What was that general conversation?

The Court: He asked you——

The Witness: I cannot recall anything further outside of the fact that he wanted us to sign.

The Court: You mean Zafran just came in and handed you that and didn't say anything and you said, "Well, I won't sign it"?

The Witness: Well, the only conversation was—I know Mr. Zafran personally.

The Court: You have known him before?

The Witness: I have known him for years, and talked to him in a very friendly manner. We are friends today.

The Court: Yes?

(Testimony of Arthur Webster Ross.)

The Witness: And during that conversation he said——

The Court: The substance of the conversation.

The Witness: The substance of the conversation was that he was presenting a contract for us to sign.

Mr. Rubin: At this time I would like to read to the ladies and gentlemen of the jury Government's Exhibit No. 3, which is headed "Southern California Market Fishermen's Master Agreement," and reads as follows:

"This Agreement made and entered into this

* * *

Q. (By Mr. Rubin): Now, Mr. Ross, was there any further conversation that you can recall that you had with Mr. Zafran and the other gentlemen who were present on May 20th other than that which you have heretofore related to the court and the jury? A. No, sir.

Q. Now subsequent to that date did you have a conversation with any other defendant who is now in the court room? A. Yes, sir.

Q. Who was that? A. Mr. Sawyer.

Mr. Rubin: Mr. Sawyer, would you mind standing?

Q. Is this the gentleman whom I am now indicating? A. Yes, sir.

Q. When was that conversation?

A. Within three days after the 20th.

Q. Where did that conversation occur? [134]

A. In the small office in my plant.

* * *

(Testimony of Arthur Webster Ross.)

Q. Who else was present there at that time?

A. Mr. Pitt.

Q. Your secretary?

A. My secretary; yes, sir.

Q. Was there anyone else present?

A. Not to my knowledge.

Q. Do you know what brought Mr. Sawyer to your office that morning?

Mr. Garrett: Objected to as calling for a conclusion of the witness.

Mr. Rubin: I am asking him whether or not he knows.

Mr. Andersen: It is still a conclusion, your Honor.

The Court: Overruled.

The Witness: We were negotiating at the time for the purchase of fish from Mr. Sawyer.

Q. (By Mr. Rubin): What was the conversation had at that time other than the negotiation for the fish?

A. He exhibited to me a letter from the union.

Q. By "union" do you mean this association?

A. By the association of boat owners.

* * *

Q. What were his words, as nearly as you can recall?

A. That he received a letter from the association of fishermen stating a strike would be called in the event that [136] we did not sign a contract of May 20 as to fish prices.

(Testimony of Arthur Webster Ross.)

Q. I show you Government's Exhibit 4 for identification and ask you if you have ever seen that document before.

A. This is the document left in my office by Mr. Sawyer.

Q. At that time? A. At that time.

Mr. Rubin: At this time, if your Honor please, the government offers into evidence as its next exhibit in order the document heretofore marked Government's Exhibit No. 4 for identification.

The Court: This will be received, subject to the motions to strike as heretofore indicated with relation to the other exhibits, and marked in evidence as No. 4.

(The document referred to was received in evidence and marked as Government's Exhibit No. 4.)

Mr. Andersen: What is the date of that?

The Court: May 17th.

Mr. Rubin: At this time I would like to read Government's Exhibit No. 4 to the ladies and gentlemen of the jury.

It is mimeographed on one sheet, at the top of which appears, in capital letters, "International Fishermen & Allied Workers of America, Local 36, Berth 72, San Pedro, California, May 17, 1946," and reads as follows: [137]

* * *

Mr. Andersen: Part of our objection to that is, your Honor, there is no foundation shown, may it

(Testimony of Arthur Webster Ross.)

please the court, as well as the corpus delicti and the other objections that are made. That is understood, I assume?

The Court: Yes; the objections are overruled. The ruling will stand, subject to that motion.

Q. (By Mr. Rubin): Now, Mr. Ross, did you—withdraw that.

Mr. Rubin: Will you mark this, please, Exhibit 5?

(The document referred to was marked Government's Exhibit 5, for identification.)

Mr. Garrett: I observe that the witness has been testifying from notes, if your Honor please. I just noticed this for the first time.

The Court: Let me see the document.

Mr. Garrett: May I hand it to the court?

Q. (By Mr. Rubin): Are those notes in your handwriting, Mr. Ross? A. Yes, sir.

Q. Did you make them yourself preliminary to coming to court?

A. They were made by myself at the time.

The Court: At the time of the events?

The Witness: Yes, sir.

The Court: Do you need these to refresh your recollection? [140]

The Witness: Only as to dates.

The Court: Only as to dates?

The Witness: That is correct.

Mr. Garrett: I ask that they be marked.

(Testimony of Arthur Webster Ross.)

The Court: It may be marked for identification Defendant Sherman's Exhibit A.

(The document referred to was marked Defendant Sherman's Exhibit A, for identification.)

* * *

Q. (By Mr. Rubin): Mr. Ross, I show you Government's Exhibit No. 5, for identification, and ask you if you have ever seen that document before.

A. Yes, sir.

Q. Where did you see that document before?

A. It was delivered to me.

Q. On what date?

A. On May 28, 1946, 10:20 a.m.

Q. How do you know that is the date and time?

A. My handwriting is on it.

Q. And by whom was that document delivered to you? [141]

A. By Mr. Zafran.

Q. Where?

A. At my office.

Q. Was anyone else present, to your recollection, at the time this document was delivered to you by Mr. Zafran?

A. I do not recollect.

Mr. Rubin: At this time, if your Honor please, the government desires to offer into evidence as its exhibit next in order the document heretofore marked Exhibit No. 5, for identification.

Mr. Andersen: Same objection.

Mr. Garrett: Same objection.

The Court: Same ruling. Admitted in evidence as No. 5.

(The document referred to, heretofore marked Government's Exhibit 5, was received in evidence.)

(Testimony of Arthur Webster Ross.)

Mr. Rubin: At this time we desire to read to the ladies and gentlemen of the jury Government's Exhibit No. 5, which is a document, carbon copy of typewriting, dated May 27, 1946, and addressed, in capital letters, to San Pedro Fish Dealers:

"Dear Sir: * * * [142]

Q. (By Mr. Rubin): Did you report to your place of business on May 29th, Mr. Ross?

A. Yes, sir.

Q. What time did you arrive there?

A. Between 8:00 and 9:00 o'clock.

* * *

Q. (By Mr. Rubin): Did you notice anything unusual at that time?

Mr. Andersen: To which we will object as calling for [143] his conclusion, entirely speculative. He may have seen a turtle walking in his office door.

The Court: Maybe he did. If it had some relation to this case it would be admissible. The objection is overruled.

Q. (By Mr. Rubin): Please answer that yes or no. Did you notice anything unusual on that occasion?

A. Yes, sir.

Q. What did you see at the fish pier on the morning of May 29th?

A. On the landward side a group of around 10 or 12 men parading with signs on their shoulders in front of our markets.

Q. What else did you see? What were these men doing?

(Testimony of Arthur Webster Ross.)

A. Parading up and down in front of the market with these signs.

Q. What did the signs have on them, if you recall?

A. "No fish, no contract. We want stabilized prices. We want a living wage." [144]

* * *

Q. (By Mr. Rubin): Now, on the seaward side did you notice anything unusual?

A. There was a boat sailing back and forth on the seaward side in front of the fish boats tied to the wharf, which we found later to be a picket boat, so-called picket boat with a sign across it also: "No fish, no contract."

Q. Mr. Ross, I show you Government's No. 2 and ask you if that is the boat that you are now referring to.

A. I can't positively recognize the boat, unless I saw the name on it.

Q. What was the name of the boat?

A. The name of the boat was the Marauder.

Q. Do you know who owns the Marauder?

A. I do not.

Q. I show you Government's Exhibit No. 1, and ask you if you recognize that as the line which paraded up and down before the fish pier.

A. Yes, sir. [145]

Q. Do you recognize any persons in that picture? A. I recognize the first man.

Q. What is his name? A. Smith.

Q. Do you know his first name or initial?

(Testimony of Arthur Webster Ross.)

A. I believe it was "W" otherwise known as Bunny. The second man I don't know. The third man is Mr. Sawyer.

Q. Mr. Sawyer who stood up a moment ago in the court room?

A. Correct. The fourth man I believe I recognize as being Chris Kennison.

The Court: Is he present?

The Witness: Yes, I believe he is the second man.

Mr. Rubin: Will you stand up, Mr. Kennison?

(The defendant Kennison stood up.)

The Witness: That is right, that is Mr. Kennison.

Mr. Rubin: Thank you, Mr. Kennison.

The Witness: That is all I recognize.

Q. (By Mr. Rubin): Do you know whether or not the persons whom you have so indicated are members of Local 36? A. I do not.

Q. Were there any boats tied up to the wharf at the time this other boat was patrolling?

A. Yes, sir.

Q. Do you know whether or not there were any boats there [146] that were owned or operated by persons who were not members of Local 36?

A. Yes, sir.

Q. And what boats were those and who were the owners or operators, if you know?

A. One of them would be the President.

(Testimony of Arthur Webster Ross.)

Q. And who is the owner or operator of the President?

A. The owner and operator would be Frank Puglese. The Jenny.

Q. Who was the owner or operator of the Jenny? A. V. Pizzo. The Sport.

Q. And who owns or operates that?

A. Joe Stagnero.

Q. Joe Stagnero owns or operates that boat?

A. Yes, sir. The Stella Maris. Batista Falcone.

Q. Do you know Mr. Falcone's first name?

A. Batista Falcone.

Q. Did any of those boats or did any boat leave the San Pedro fish wharf on May 29th?

A. I believe that the President, one of the small boats, did leave that morning. [147]

* * *

Q. (By Mr. Rubin): Did any trucks arrive at the wharf that morning, to your knowledge?

A. Yes, sir.

Q. Let me ask you this, Mr. Ross: You purchased fish, you testified, I believe, from the seaward side, from the boats, is that correct?

A. Yes, sir.

Q. Do you obtain fish for processing through your place of business from any other source?

A. From outside ports, other fishing ports in the State of California.

Q. And what are some of these other ports in California that you purchase fish from?

(Testimony of Arthur Webster Ross.)

A. San Diego, Santa Barbara, San Francisco, Eureka.

Q. And you testified, I believe, before the recess that you purchased fish from out of the State, too?

A. Yes, sir.

Q. How was that fish delivered to your place of business at San Pedro?

The Court: Which? The out of State or from the other ports?

Mr. Rubin: Both, if your Honor please.

A. Either by Railway Express Agency or by refrigerated fast freight.

Q. (By Mr. Rubin): And the fish from the States of Oregon and Washington, specifically, are delivered to your place of business through what means? A. By either of those two agencies.

Q. Now, in addition to the fish which you purchased from the seaward side and the fish that you purchased from ports located in other points within or without the State of California, do you have and carry an inventory at your place of business? A. Yes, sir.

Q. What is the nature of that inventory?

A. It consists of fresh and frozen fish.

Q. I see. Now, on the day of the strike did you have—withdraw that. The day you found this group of men parading up and down the fish wharf, did you have any conversation with any of the defendants in this case? [150]

A. Yes, sir.

Q. With whom?

(Testimony of Arthur Webster Ross.)

A. With Mr. Sawyer particularly.

Q. And when was that conversation?

A. As he approached the wharf.

Q. Who was present there? Do you know who was present when you talked to Mr. Sawyer that day?

A. Merely Mr. Sawyer. It was a conversation between the two of us.

Q. Mr. Sawyer and yourself? A. Yes, sir.

Q. Was anybody else present? A. No, sir.

Q. What was said at that time?

A. I asked him what was going on? He said, "The strike is in force."

Q. What else was said, if anything?

A. On that particular day? Nothing, except pass the time of day.

Q. Apart from this one boat, the President, did any other boats leave the port that day?

A. Not to my knowledge.

Q. Did any boats bring fish in that day?

A. No, sir, unless the President brought in a few fish.

Q. But other than that one boat you don't know whether [151] any other fish was landed in San Pedro? A. That is correct.

Q. Mr. Ross, during the period of time when the so-called pickets were parading in front of the places of business of the fish dealers at San Pedro, was any fish of any sort landed by anybody on the seaward side of that fish wharf?

A. No, sir.

(Testimony of Arthur Webster Ross.)

Q. Day or night?

A. Not to my knowledge.

Q. What are your usual hours of business?

A. From 7:00 o'clock in the morning to 7:00 o'clock at night.

Q. And are you there generally during that period of time?

A. No, sir.

* * *

Q. (By Mr. Rubin): I believe you testified that certain trucks did unload fish on the landward side, is that correct?

The Court: You mean on that day, or customarily?

Mr. Rubin: On that day, yes, your Honor.

Q. (By Mr. Rubin): I will ask you, did any trucks unload fish on the dock side, the land side on that day, to your knowledge? [152]

A. I don't know about the trucks, I am not sure about it.

Q. Was any fish landed from any source on the dock side that day?

A. By the Railway Express Agency.

Q. Did they unload fish at your place of business?

A. I do not know.

* * *

Q. (By Mr. Rubin): For how many days did the Railway Express Agency unload fish on the dock side of the fish pier during May, to your knowledge?

(Testimony of Arthur Webster Ross.)

A. Two days; Friday and Saturday. If I could have my notes, I will give you the exact dates, if counsel will be so kind as to hand them back to me.

(The document was handed to the witness.)

The Witness: Thank you. Thursday, the 30th of May, was a holiday, the place was closed. The 31st of May and the 1st of June we were allowed to operate.

Mr. Anderson: I move that be stricken as calling for the conclusion and opinion of the witness, may it please the court, what he may or may not have been allowed to do by anybody.

Mr. Garrett: Objected to as not responsive.

Mr. Andersen: Also as not responsive. [153]

The Court: The word "allowed" may be stricken. Let's read the question again. I believe he said during the month of May.

Mr. Rubin: The month of May.

The Court: The whole month?

Mr. Rubin: Commencing with the 27th, and I should include——

The Court: You didn't say that.

Mr. Rubin: I should have said during the period of time that the pickets were walking up and down outside the pier.

The Court: Well, we don't know how long they were walking up and down outside the pier.

Mr. Rubin: All iright.

Q. (By Mr. Rubin): The Railway Express, as I understand your testimony, delivered fish for two days after the pickets appeared, is that correct?

A. That is correct.

(Testimony of Arthur Webster Ross.)

The Court: What dates were those?

The Witness: Those dates were May 31st and June 1st.

Q. When——

A. The strike was effective on May 29th, the 30th being a holiday.

Q. When were the pickets withdrawn, Mr. Ross, to your knowledge? A. By July 1st. [154]

Q. Now, then, from May 29th to July 1st, apart from those two days, did the Railway Express Agency unload any fish on the wharf of the fish pier at San Pedro?

Mr. Garrett: One moment, please. Objected to as incompetent, irrelevant and immaterial, and not tending to prove or disprove any of the issues in this case.

* * *

Mr. Andersen: The objection is that this matter relating to picketing is incompetent, irrelevant, has nothing to do with the matter charged in the indictment, and we would [155] like to argue the point, may it please the court. [156]

* * *

The Court: The objection will be overruled. The objection made both by Mr. Garrett and by Mr. Andersen will be overruled. [157]

Mr. Garrett: May I state, if your Honor please, my objection is not based upon the general proposition but what I believe to be the lack of casual connection shown by the foundation.

(Testimony of Arthur Webster Ross.)

The Court: I think I understand it.

Those objections are both overruled.

Would counsel care to—well, I was going to suggest that an objection made by any defense counsel would be made on behalf of all defendants unless it was specifically disclaimed.

Mr. Andersen: That is quite agreeable, your Honor.

Mr. Garrett: That is agreeable.

The Court: That will be the order of the court then. [158]

* * *

By Mr. Rubin:

Q. Between May 29, 1946, and July 1, 1946, and with the exception of May 29 and May 30, Mr. Ross, was any fish unloaded at the San Pedro fish pier by the American Railway Express Agency?

Mr. Andersen: To which we will object on the ground it assumes something not in evidence.

Mr. Garrett: That is our objection.

The Court: He testified that the fish was not delivered on May 30th because it was a holiday but it was delivered on June 1st.

Mr. Rubin: I am now asking him whether at any time between that date and July 1st, 1946, any fish was delivered.

The Court: The same objection, I suppose, that you heretofore stated?

Mr. Garrett: Same objection, no proper foundation for it.

The Court: Objection overruled. [160]

* * *

(Testimony of Arthur Webster Ross.)

A. My answer to you is no, sir, there were no fish delivered.

Q. Now, in so far as your business is concerned, do you customarily order fish for delivery from points other than San Pedro to be delivered on your dock by truck companies or the Railway Express Agency?

A. Yes, sir. [161]

* * *

Q. Can you tell the court and jury whether or not in your business, during the month of June, you make such purchases?

* * *

The Witness: Yes, sir.

The Court: He has answered.

By Mr. Rubin:

Q. How far in advance of such deliveries are such orders placed generally in your business?

* * *

The Witness: Three to four days.

By Mr. Rubin:

Q. Three to four days prior to when?

A. To making the purchase.

Q. Now prior to May 27, 1946, had you ordered such fresh fish from points other than San Pedro to be delivered to your place of business? [162]

The Witness: Yes, sir.

* * *

Q. (By Mr. Rubin): From what points, Mr. Ross, prior to May 27, 1946, do you order such fresh fish to be delivered to the dockside of your place of business?

(Testimony of Arthur Webster Ross.)

A. From San Diego, Santa Barbara, San Francisco, Eureka, Astoria, Bellingham, Seattle, Coos Bay and Anacortes. [163]

* * *

Q. (By Mr. Rubin): Mr. Ross, with respect to the fish which you ordered prior to May 27th, several days prior to May 27th, 1946, had you had any such conversation with any of the defendants in this case.

A. Yes, sir.

Q. With whom? A. With Mr. Zafran.

Q. When was that conversation?

A. On the day of the strike.

Q. Who was present?

A. I talked to him personally. I believe we were together.

Q. Was anybody else there?

A. Not to my knowledge.

* * *

Q. (By Mr. Rubin): Where did the conversation occur, Mr. Ross?

A. On the wharf?

Q. Now what was said?

Mr. Andersen: We urge the same objection as heretofore made, may it please the court. [164]

The Court: Overruled.

The Witness: I asked Mr. Zafran if we could get rid or could sell the fish that we had on hand or was coming in on those two days, and he gave us, kindly gave us, permission to sell what fresh fish we had on hand.

* * *

(Testimony of Arthur Webster Ross.)

Q. What did Mr. Zafran say to you? Can you recall his words or the substance of what he said to you? Mr. [165] Zafran said to you as follows. Now what follows, if anything?

A. You can sell and deliver through the Railway Express or whatever means we will have to get rid of it, by truck, during May 31, which was Friday, and June 1st, which was a Saturday. That gave us a chance to clean up all fresh fish so that we would not have any loss.

Q. Was any conversation had between yourself and Mr. Zafran as to any other fish that would come in on either the landward or the seaward side?

A. After that we could not ship.

* * *

Q. What were the words, not the identical words because [166] probably you may not be able to remember them, but what was the substance of the words that Mr. Zafran used to you that morning, if anything, with respect to additional fish coming in or going out?

A. No fish would be permitted to come in on the seaward side or on the land side after Saturday, June 1st.

Q. All right. Did you say anything to him after he said that to you?

Mr. Andersen: Same objection runs to this line of testimony, your Honor.

The Court: Overruled.

The Witness: I said, we would try to do what business we could.

* * *

(Testimony of Arthur Webster Ross.)

Los Angeles, California, March 19, 1947

10 A.M.

Q. Mr. Ross, last evening before the adjournment we were discussing the delivery to your place of business of [177] fresh fish from other points within and without the state of California by the American Railway Express. Will you describe to the Court and jury, please, the usual and customary procedure of such shipments prior to May 27, 1946, immediately prior to that period? [178]

* * *

The Witness: Fish is received by us from points in California and outside of California either by Railway Express Agency or by refrigerated trucks who bring same to the wharf side, that is, the landward side of our place of business, and deliver same into our place of business.

Q. (By Mr. Rubin): Now that is both by the Railway Express and by motor freight?

A. Correct.

* * *

Q. Now, after May 27 and to and including the 1st of July, the date which you testified I believe that this line [179] was withdrawn, was there any change of the procedure, the mechanics of delivering fish to your place of business on the fish pier by the American Railway Express?

A. Yes, sir.

* * *

(Testimony of Arthur Webster Ross.)

Q. The question, Mr. Ross, was, what was the change of procedure with respect to the method of delivery or pickup by the American Railway Express during the month of June.

Mr. Garrett: Objected to as leading and assumes that there was a change in procedure; assuming facts not in evidence. [180]

Mr. Rubin: I just asked him if there was a change after that period.

The Court: Overruled.

The Witness: There was a change.

Q. (By Mr. Rubin): What was that change with respect to the American Railway Express alone?

* * *

The Witness: During the first few days after July 1st, fish was delivered to the Los Angeles depot.

Q. (By Mr. Rubin): The Los Angeles depot of what?

A. Of the Railway Express Agency.

Q. Was that your fish?

A. That was my fish.

Q. When had you ordered that fish that had been delivered to the Los Angeles depot a few days after the picket line was placed around there?

A. Three to four days in advance.

Mr. Garrett: Same objection. [181]

The Court: Same ruling.

I do not know what you mean by the Los Angeles depot. You said fish was delivered to the Los Angeles depot.

(Testimony of Arthur Webster Ross.)

The Witness: Los Angeles depot of the Railway Express Agency.

The Court: Where is the Los Angeles depot of the Railway Express Agency?

The Witness: In the joint station, in the central station of all railroads.

The Court: Central station?

The Witness: Of all railroads in Los Angeles.

The Court: You mean down here at the Union Terminal?

The Witness: Union Terminal.

The Court: In Los Angeles?

The Witness: In Los Angeles.

Mr. Garrett: Your Honor please, may I have a continuing objection on the basis stated to this line of questioning?

The Court: The record will so note without repeating an objection to each question, counsel's objection will stand, and the same ruling.

Q. (By Mr. Rubin): Was that fish subsequently delivered to your place of business at the San Pedro pier? A. No, sir.

Q. Was it delivered there by any person? [182]

A. It was brought in by ourselves.

Q. Where did you obtain the fish?

A. At the same depot of the Railway Express Agency.

Q. What transportation did you use to deliver the fish from the depot? A. Our own truck.

Q. Who drove the truck? A. Mr. Pitt.

(Testimony of Arthur Webster Ross.)

Q. What capacity does Mr. Pitt have in your organization? A. Secretary.

Q. Do you employ other drivers in your place of business? A. No, sir.

Q. Was Mr. Pitt your customary driver?

* * *

The Witness: No, sir.

Q. (By Mr. Rubin): Who was your customary driver?

A. We have no customary driver.

Q. Was fish transported to the Los Angeles depot from [183] your place of business after the first two days of the picket line?

A. Yes, sir.

Q. And by whom was that fish transported?

A. By Mr. Pitt.

Q. For how many days, approximately, was fish which you purchased from points outside of Los Angeles, both within and without the state of California, delivered by the American Railway Express to their Los Angeles depot?

A. Approximately three or four days.

Q. Was there a change in the delivery procedure after that period of time? A. Yes, sir.

Q. What was that change?

A. The fish delivery was made to the depot of the Railway Express Agency at San Pedro.

Q. By what means was the fish transported from the depot in San Pedro to your place of business?

A. By our own truck.

(Testimony of Arthur Webster Ross.)

Q. And was fish delivered to the Railway Express in San Pedro from your place of business?

A. Yes, sir.

Q. Through what means?

A. By our own truck.

Q. At any time during the period between June 1st and [184] July 1st was any fish delivered directly to your place of business at the fish wharf by the American Railway Express?

A. No, sir.

Q. Was any fish picked up at your place of business by the American Railway Express during that period?

A. No, sir.

Q. Now, with respect to fish received by motor freight concerns, I believe you said, and I believe also you testified that they came from points within the state and in northern states of Washington and Oregon, what was your customary and usual procedure in your place of business in the receipt and pick-up of fish transported by motor freight companies?

A. The customary procedure was to receive it at the landward side of the wharf and placed in our place of business.

Q. Mr. Ross, calling your attention to Government's Exhibit No. 1, I ask you if that is a picture of the pier upon which your place of business is located.

A. Yes, sir.

Q. How many fish buyers are located on that pier?

A. During that period, twelve.

(Testimony of Arthur Webster Ross.)

Q. Are there any fish buyers located at any other point besides that pier in San Pedro, to your knowledge? A. Not to my knowledge. [185]

The Court: In other words, that is the fish buying center for San Pedro?

The Witness: Correct.

* * *

Q. After June 1, 1946, was there any change of procedure [186] at your place of business in shipping or receiving fresh fish on the landward side by transportation other than the Railway Express, namely, the motor trucks that you referred to?

A. The refrigerated trucks delivered our fish to the Union Ice Company at Wilmington.

* * *

Q. At whose instructions was the fish delivered to the Union Ice Company?

A. By our instructions.

Q. When did you give the motor truck company that instruction? A. After June 1st.

The Court: After June 1st?

The Witness: On June 1st, 1946.

Q. (By Mr. Rubin): Was that fish thereafter delivered to your place of business on the fish pier?

A. Yes, sir.

Q. By whom? A. By our own truck.

Q. Driven by whom?

A. By Mr. Pitt.

Q. Now with respect to fish shipped out of your place of business, was there any fish shipped from

(Testimony of Arthur Webster Ross.)

your place of business by motor truck other than the Railway Express during the month of June, 1946? A. No, sir.

Q. Was any fish shipped out of your place of business by any means of transportation during June, 1946? A. Yes, sir.

Q. By what transportation?

A. By our own truck.

Q. And to what point was that fish transported?

A. To the depot in San Pedro.

Q. What depot?

A. Of the Railway Express Agency. [188]

Q. As to shipments that were thereafter to be carried by the Railway Express Agency?

A. Yes, sir.

Q. How about shipments that were to be carried by truck other than the Railway Express?

A. We did not have any.

Q. You did not have any. So that during June, 1946, no shipments emanated from your place of business by any transportation other than the Railway Express Agency, and then from its depot in San Pedro. A. Yes, sir.

* * *

Q. (By Mr. Rubin): Did you make any efforts to have the American Express Agency pick up and deliver—pick up from and deliver to your place of business fish received from and destined to other points within and without the State during June, 1946? A. Yes, sir. [189]

(Testimony of Arthur Webster Ross.)

Mr. Andersen: I think we should object to that on the ground heretofore stated, may it please the court.

The Court: Objection overruled.

Q. (By Mr. Rubin): And what efforts did you make, Mr. Ross?

A. We got in touch with Mr. Ripley.

Q. Who is Mr. Ripley?

A. Superintendent of the Railway Express Agency in Los Angeles, and asked him to deliver and to accept fish at our wharf for shipment to outside points in the State of California, and to outside points outside of the State of California.

Mr. Andersen: We will object to all of this as hearsay as to these defendants, may it please the court.

Mr. Garrett: Same objection.

Mr. Andersen: I move the answer be stricken.

Mr. Garrett: In addition to the standing objection.

Mr. Rubin: If your Honor please, if I might be heard for a moment. This testimony goes to the nature of the restraint against interstate commerce.

The Court: I understand that. I am just pondering their objection.

Mr. Andersen: If I might add, may it please the court, the charging allegation in the indictment is the agreement among the fishermen themselves as to the price. That is the [190] gravamen of the action here. [191]

(Testimony of Arthur Webster Ross.)

The Court: The portion of the answer beginning with "and asked him to deliver" may be stricken. Otherwise the motion to strike is denied.

Q. (By Mr. Rubin): Now, Mr. Ross, after making such efforts did, during the month of June, 1946, the American Railway Express Company deliver to or pick up from your fish pier any fish destined to any point?

* * *

A. No, sir.

Q. (By Mr. Rubin): Mr. Ross, I show you what has been marked as Government's Exhibit No. 6, for identification, and ask you what that purports to be. [192]

A. These figures represent the fish landed at the wharf in San Pedro from July, 1945, to July 16, 1946. [193]

* * *

Q. (By Mr. Rubin): Mr. Ross, were you requested by the government attorneys to prepare statistics from your records as to fish purchased by you and shipped by you at your place of business?

A. Yes, sir.

Q. And were you requested to include in those statistics fish both landed at the wharf at your place of business and fish received by you on the landward side? A. Yes, sir.

Q. And fish shipped by you on the landward side, was that to be included also?

A. Yes, sir.

(Testimony of Arthur Webster Ross.)

Q. And did you prepare such statistics?

A. I had my bookkeeper prepare those statistics.

Q. And were those statistics prepared under your immediate supervision and control?

A. Yes, sir.

Q. What is the name of your bookkeeper?

A. Mrs. Pitt. [194]

* * *

Q. (By Mr. Rubin): And is Government's Exhibit No. 6, for identification, a compilation of the statistics so requested of you? A. Yes, sir.

Q. Calling your attention to the first page of—

The Court: Statistics of what? Fish shipped. Fish shipped out by you, fish shipped in by you?

The Witness: Yes.

The Court: Both?

The Witness: Yes.

The Court: What period was the request here to make—

The Witness: From July, 1945, to July, 1946.

The Court: All right.

The Witness: Including poundage and dollars and cents.

The Court: And source of origin?

The Witness: Yes, sir.

The Court: Or destination?

The Witness: Yes, sir.

The Court: All right.

Q. (By Mr. Rubin): What classification as to destination points was made in this compilation, Mr. Ross?

(Testimony of Arthur Webster Ross.)

A. Points within the State of California, and points without the State of California. [195]

* * *

As to fish purchased both within the State at your wharf side and received on the dock side, what does the dollar figure represent? A. Cost.

Q. And as to fish shipped from your place of business to points within and without the State of California what does the dollar figure represent?

A. Selling price.

Q. That is your selling price? A. Yes, sir.

* * *

Mr. Rubin: Withdraw the question at this time. The government offers Government's Exhibit No. 6, for identification, into evidence as the Government's exhibit next in order.

Mr. Garrett: If your Honor please, may I have the witness on voir dire?

The Court: All right.

Voir Dire Examination

By Mr. Garrett:

Q. Mr. Ross, do you keep books?

A. No, sir.

* * *

Q. (By Mr. Garrett): Does Mrs. Pitt keep books? A. Yes, sir.

Q. She is your bookkeeper? A. Yes, sir.

Q. Employed by the American Fisheries Company, Incorporated? A. Yes, sir. [197]

(Testimony of Arthur Webster Ross.)

Q. And the records that you have here are records—No. 6, for identification, is that a document which purports to be information relating to business of the American Fisheries Company, Incorporated?

A. Yes, sir.

Q. And you say that was prepared by Mrs. Pitt?

A. Yes, sir.

Q. Do you know what she prepared it from?

A. From our books.

Q. What?

A. From the company's books of record.

Q. Where are those books of record kept?

A. In my place of business in the office on the Municipal Fish Wharf.

Q. Are they there now? A. Yes, sir.

Mr. Garrett: No further questions.

Objected to as not the best evidence.

Mr. Andersen: That is part of the basis of our objection, also, as not being the best evidence. Possibly the books should be brought into court in order that we may have access to them in order to check these figures.

The Court: Do you object on the basis that it is not the best evidence?

Mr. Andersen: Yes, your Honor. [198]

Mr. Rubin: Your Honor please, these statistics were prepared under the immediate supervision and control of the witness on the stand, who is the head of this organization. The compilation certainly can be testified to and admitted into evidence upon in-

(Testimony of Arthur Webster Ross.)

formation of his own organization as to all of the fish purchased and received there at San Pedro.

The Court: I think, counsel, that under Section 695 of Title 28 it was intended that compilations such as this should be admitted into evidence, but at the same time I think that the documents from which these were made should be in court.

Mr. Andersen: That is right.

The Court: So that if counsel for the other side desire to test the credibility of these figures by recourse to that document, they may do so. If, on your assurance that the documents will be produced, I will order—what books did she take these from? Do you have one ledger?

The Witness: No, we have accounts receivable, accounts payable; we have a complete set of books.

The Court: Do you finally reduce it down to one book?

The Witness: No, sir.

Mr. Rubin: From what source were these figures obtained?

The Witness: It consists of many receiving records, sales records—it would be a tremendous task to bring those books in here, and they are in current use. [199]

Mr. Andersen: We will of course waive our objection if the books and records are produced for our inspection.

Mr. Garrett: I won't waive any objection, if your Honor please. I want to see those books.

The Court: You say this is in 1946?

(Testimony of Arthur Webster Ross.)

The Witness: From 1945 to 1946.

The Court: I think the books ought to be produced.

Mr. Rubin: Mr. Ross, if the Government asks and cooperates in the production of those books will you see that those books are produced?

The Court: I do not think that they ought to be produced or kept here for any length of time other than for giving counsel recourse to them on the cross-examination of this witness.

Mr. Andersen: That is right.

The Court: In other words, there is no necessity to bring them here and leave them here until this case is finally finished.

Mr. Rubin: I think, if your Honor please, I can arrange to have the books here, and I will ask Mr. Ross if he will give us his assurance of that co-operation.

The Witness: Yes, sir.

The Court: Very well. On that assurance the document will be admitted at this time. It will be stricken if the books are not produced. [200]

The Clerk: No. 6.

(The document referred to was received in evidence and marked Government's Exhibit No. 6.)

Mr. Garrett: If your Honor please, may we have the production of the books before the matter in that document is shown to the jury so that the basis of the compilation may be ascertained? The

(Testimony of Arthur Webster Ross.)

damage done by a purely hearsay document might be hard to remedy, particularly if the proper books are not produced hereafter.

Mr. Rubin: If your Honor please, the only purpose of producing the books——

The Court: The witness has testified that these were compiled by the regular bookkeeper that he had in the regular course of his business and I think it is a pretty fair inference and assumption that he does business on the basis of those same books, and the books will be produced so that you can cross-examine him, and if the value of his testimony is destroyed by your cross-examination, then it will have no weight with the jury. It is a question of weight and not of admissibility.

* * *

Direct Examination
(Continued)

By Mr. Rubin:

Q. Mr. Ross, are the books and records from which this compilation is obtained, made and kept in the usual course of business at your place of business? A. Yes, sir.

Q. Now calling your attention to that portion of page 1 of Government's Exhibit No. 6 in evidence, headed "Fish Landed at the Wharf" will you look at that portion and state [202] to the jury the number of pounds of fish which were landed at your place of business at the wharf at San Pedro in the calendar year preceding, immediately preceding, July 16, 1946? A. 392,158.

(Testimony of Arthur Webster Ross.)

Q. Is that pounds? A. Pounds.

Q. Having a dollar value of cost to yourself?

A. \$43,134.97.

Q. Calling your attention to that portion of the same exhibit headed "Purchases within California" I will ask you to give the same figure in pounds and dollar value.

A. 358,810 pounds; value in dollars, \$78,649.02.

Q. Calling your attention to that portion entitled "Purchases from out of state" for the same period, I would ask you to give the two figures representative of the poundage and dollar value of those purchases.

A. 56,039 pounds; in dollars, \$12,838.13.

The Court: For when?

The Witness: For the same period of time; July 1945 through July 16, 1946.

Q. (By Mr. Rubin): Calling your attention to the second page of Government's Exhibit No. 6, and specifically with reference to that portion captioned "Sales Within California" would you give us the amount of sales in pounds and dollars to points [203] within the state of California?

A. 663,813 pounds; dollar and cents value, \$149,008.24.

Q. Calling to your attention that portion captioned "Sales out of State" for the same period would you give us the same two figures?

A. Poundage, 79,284 pounds; value, \$18,036.68.

Q. Now with respect to the fish landed at the wharf—I will withdraw that question.

(Testimony of Arthur Webster Ross.)

Mr. Ross, are there seasonal periods in your business where fish purchases are heavier than other periods during the year? A. Yes, sir.

Q. What season of the year is represented by the heaviest purchases?

A. From January to June.

Q. Now with respect to your particular business, are there seasonal sales that fluctuate throughout the year? A. Yes, sir.

Q. What are the periods of the heaviest sales?

A. Through January and June.

Q. With respect to your own particular business, can you tell us——

The Court: I don't understand your answer. The sales are biggest through January to June? You said the catch was biggest from January to June. [204]

The Witness: And the sales are greatest through January to June.

The Court: During the same period?

The Witness: Yes.

The Court: From January through June?

The Witness: That is right.

Q. (By Mr. Rubin): Now calling your attention to that portion of Government's Exhibit 6 entitled "Fish Landed at the Wharf," will you state the amount of fish that was landed at the wharf and purchases by you for the month of May 1946?

A. For the month of May 1946, 27,272 pounds; value, \$1611.97.

(Testimony of Arthur Webster Ross.)

Q. Now looking at the same portion of the exhibit, will you tell us the amount of pounds of fish landed at your wharf from July 1st through July 16 of 1946?

A. From July 1st to July 16th, 11,365 pounds; value, \$1379.59.

* * *

Q. Calling your attention to the same portion of the fish landed at your place of business at the San Pedro wharf, will you look at the Government's Exhibit No. 6 and tell the [205] Court and jury what that indicates as to the amount of poundage of fish or the dollar value landed at your place of business during the month of June 1946.

A. No poundage in June; no value in June.

Q. Now, Mr. Ross, do you purchase fish from any other source besides the persons who land fish at your wharf and sell it to you and from the landward side from points within and without the state of California—I withdraw that question.

Do you purchase fish from any points originated other than within the continental limits of the United States? A. Yes, sir.

Q. And are those fish landed on the landward side of your fish wharf? A. Yes, sir.

Q. Do you know of your own knowledge the origination point of such fish?

A. The Gulf of California.

Q. The Gulf of California? A. Yes, sir.

Q. How is that fish transported to your place of business? A. By truck.

(Testimony of Arthur Webster Ross.)

Q. From what country or countries?

A. From Mexico. [206]

Q. During the month of June 1946, did you receive any such shipments from Mexico?

A. No, sir.

Q. Do you know whether or not of your own knowledge that trucks brought fish from Mexico to the fish wharf or the vicinity of the fish wharf during June 1946?

A. Not to my knowledge.

* * *

Q. Now, Mr. Ross, to whom do you sell your fish, to what type of organization or outlet?

A. The bulk of our fish is sold to the Oriental trade.

The Court: To what?

The Witness: Oriental trade.

The Court: Oriental trade?

The Witness: Yes, sir. [207]

Q. (By Mr. Rubin): And do you deliver that fish yourself?

The Court: What do you mean by that?

The Witness: Mostly to Japanese and Filipino croppers who work as agricultural workers in the state of California.

The Court: You mean it is sold here?

The Witness: Yes.

The Court: Directly to those people or through other outlets?

The Witness: Through other outlets such as Stockton, Sacramento, Fresno, who in turn sell it to these Filipino people and to Japanese workers.

(Testimony of Arthur Webster Ross.)

The Court: Then you do not sell your fish to the Japanese or Filipinos, you sell it to somebody else, do you not, to dealers?

The Witness: Retail dealers.

The Court: Where?

The Witness: In the State of California.

Q. (By Mr. Rubin): Is there any other category of persons or class of persons to whom you sell fish at your fish wharf?

A. We sell to house-to-house peddlers.

Q. How do they obtain the fish?

A. By coming to the wharfside, to the landward side, and buying the fish direct. [208]

Q. Can you tell us approximately the percentage of your business that is done with these peddlers who come to your place of business and pick up fish?

A. Approximately 10 per cent.

Q. Now during the month of June did you sell any fish to peddlers who came to your fish wharf to pick up fish?

A. No, sir.

Mr. Andersen: To which we object as incompetent, irrelevant and immaterial.

The Court: Overruled.

Q. (By Mr. Rubin): Mr. Ross, you testified yesterday, I believe, that on or about July 1, 1946, the lines were withdrawn from around the fish wharf. Thereafter did you purchase fish from fish that was landed at the fish wharf on the seaward side?

A. Yes, sir. [209]

* * *

Q. Mr. Ross, do you know whether or not there was any fluctuation in the number of customers to whom you sold fish prior to June 1946, immediately

(Testimony of Arthur Webster Ross.)

prior to June 1946, during June 1946 and immediately subsequent to June 1946?

Mr. Andersen: Same objection.

The Court: Overruled.

The Witness: Yes, sir.

Mr. Andersen: Also it would not be the best evidence.

The Court: Objection overruled. [210]

* * *

Q. (By Mr. Rubin): The question is whether or not there was any change in the number of customers to whom you sold during those three periods, and I am now asking you what is the change in that number.

The Court: The change in number, or percentage.

The Witness: A loss of 70 per cent during the month of June. [211]

* * *

Mr. Rubin: No further questions. [212]

* * *

Cross-Examination

The Court: Do you ever fill orders for any of the other wholesalers?

The Witness: No, sir.

By Mr. Garrett:

Q. Where do you enter—the books are not here or I could go directly to them.

The Court: The books will be here. You can find out [273] all those things very readily by an examination of the books. If you are just trying to test the witness' memory, I suppose you can go

(Testimony of Arthur Webster Ross.)

on. There is a reasonable limit, however, as to that.

Mr. Garrett: I understand, your Honor. I think this is material.

The Court: What the books show?

Mr. Garrett: Yes. I will merely say that I must cross-examine on the memorandum without the books themselves and that may, of course, require questions which would find their answer in the books if they were here.

Mr. Rubin: I would like to ask counsel what memorandum he is referring to.

The Court: Exhibit No. 6, I take it.

Mr. Garrett: Exhibit 6; that is correct.

Mr. Rubin: There is nothing in Exhibit 6 that refers to any of the sales that counsel is examining the witness on now.

The Court: That is what he is trying to find out.

Mr. Garrett: The exhibit, if your Honor please, refers to the gross sales.

The Court: If you merely desire to know what is in the books, I think perhaps in the interests of time saving you might defer this section of your cross-examination of this witness until they are made available and you can look at [274] them. Otherwise we can go on here into the fish business, buying and selling fish, and that is what this line of questioning involves.

Mr. Garrett: Your Honor, I have found two cases during the noon recess that I would like to call to your Honor's attention, if I might, relating to the use of this memorandum in evidence without the books themselves being here.

(Testimony of Arthur Webster Ross.)

The Court: The books are going to be here, counsel. I think it would be appropriate to urge that point after the books are here.

Mr. Garrett: I have a few other questions.

The Court: I do not wish to restrict you in your examination, but only in the interests or time saving I suggest you defer this section of your cross-examination until the books are here, and they will be here tomorrow.

Mr. Garrett: I will abide by your Honor's ruling.

The Court: They will be here tomorrow?

The Witness: If so ordered.

The Court: They are ordered.

The Witness: All right. [275]

Q. (By Mr. Garrett): What other books did you have to go to——

The Witness: On that question, what books do you request me to bring?

The Court: Whatever books you had your book-keeper make up that memorandum from, No. 6; whatever books you used in making that up.

Q. (By Mr. Garrett): You told me that the information on sales as to both dollars and pounds comes from your sales invoice book, is that correct?

A. That is correct.

Q. That is one book.

A. That is one book.

Q. You have told me that—no, you haven't told me yet——

A. It may be two books, because of the end of the year.

(Testimony of Arthur Webster Ross.)

Q. One for '45 and one for '46? A. Yes.

The Court: Let's get the books, and then we can talk about that, counsel.

Mr. Garrett: I would like to know what books we are going to get, your Honor.

The Court: We are going to get all the books used in connection with that.

Mr. Garrett: I would like to ask a question about where [276] the purchases come from, where his record of purchases is kept, how he keeps that.

The Court: Why don't we just get the books, and we can see, and then you can cross-examine him on the books if there is any discrepancy.

Mr. Garrett: I will be glad to, but I just wanted to find out where all this mass of records was that he said he couldn't bring in here.

The Court: He stated he would bring them in here. Did anyone ask you to bring your records in here?

The Witness: No, sir, not until a few minutes ago. [277]

* * *

Q. (By Mr. Kenny): Mr. Ross, yesterday Government counsel asked you with reference to the conversation you had with Mr. Zafran and others in your office on the 20th of May, the Government attorney asked you if you had signed the contract which is Government's Exhibit No. 3, which was offered to you at that time, and you said that you did not sign that. Then you said: "Did you sign the contract at any other time?" and your response to that was "I did not."

(Testimony of Arthur Webster Ross.)

Now with reference to those other times, there were several other conversations that you had during the course of negotiation with the fishermen and their attorneys, is that right? A. Yes, sir.

Q. And just to summarize it and make it clear for the jury from what has been discussed so far, I believe your first discussion was with Mr. Sawyer on the 17th day of May when you were negotiating the purchase of some fish from him and he gave you Government's Exhibit No. 4. Do you recall that?

A. Yes, I recall that. But it was not on the 17th. The letter was dated the 17th, but it was some days later. [289]

Q. That was the letter—to refresh your recollection——

A. The letter to the membership of the union?

Q. Yes, which read, "For many years we have gone out fishing fresh market fish not knowing what the price would be on our return."

A. Yes, sir; that is correct.

Q. Then on the 20th of May you had a conversation in your office with Mr. Zafran and four other gentlemen, fishermen, I think one of them was Mr. McKittrick, and at that time the contract, that is, Government's Exhibit No. 3, was offered you, the contract which you testified you did not sign. Then you had another conversation on the 28th of May with Mr. Zafran and at that time I think you testified that he handed you Government's Exhibit No. 5—the exhibit numbers don't mean much but it is——

(Testimony of Arthur Webster Ross.)

The Court: The Clerk will hand it to you.

The Witness: That was the letter making the strike effective as of that date?

Mr. Kenny: Yes.

The Witness: That is correct. I remember that.

Q. (By Mr. Kenny): The last paragraph read, "The purpose of this decision was to expedite matters and get a decision from the Government agencies in reference to the legality of signing [290] a maximum price agreement." A. Yes, sir.

Q. That was on the 28th. Then the strike took place on the 29th? A. Correct.

Q. Then on the 7th of June in your office you met with Mr. Ekdale and Mr. Margolis, the counsel for the fishermen, and certain other fishermen, that is, working fishermen?

A. Could I have my memorandum to tell you if that date is correct?

(The document referred to was passed to the witness.)

The Witness: That meeting was with Mr. Margolis, Mr. Zafran, the dealers and Mr. Ekdale. That was the 7th.

Mr. Kenny: That is right.

Q. Then there was another meeting on the 10th of June, also in your office. I think probably the same parties were there except Mr. Margolis was not there.

A. Mr. Margolis was not there but in addition to that Mr. Kibre was there.

(Testimony of Arthur Webster Ross.)

Q. That is right. Yes. And then on the following day a conference took place in Mr. Ekdale's office at which the same parties named and Mr. Margolis was present? A. That is correct. [291]

* * *

Q. (By Mr. Kenny): Mr. Ross, on the 20th of May when Mr. Zafran and the four other fishermen came into the contract, didn't you at the outset of that conversation say that you would be glad to see chiseling cut out and a stabilized price agreement in effect if it was legal? A. Yes, sir.

Q. Did you not at that time hear Mr. Zafran point out to you that the principal objective of the fisherman was to obtain a guaranteed price for their catch before they went out into the high seas to catch their fish? A. Yes, sir.

Q. Weren't there also statements made by Mr. Zafran at that time that when prices dropped to the fishermen it affected the whole industry and the consumers adversely, [293] because it caused men to leave the fishing fleet and cut down the number of fishermen? A. Yes, sir.

Q. And was there not at that time a discussion—no, I think this is more properly on the occasion that Mr. Margolis was present with you in Mr. Ekdale's office—a discussion of the provisions of the fishermen's marketing act? A. Yes, sir. [294]

* * *

Q. Mr. Margolis or—we will say Mr. Margolis—at that time discussed with you that the fishermen were exempt from the acts which you feared be-

(Testimony of Arthur Webster Ross.)

cause they were covered by the Fishermen's Co-operative Marketing Act, isn't that right?

A. That was discussed between Mr. Ekdale and Mr. Margolis in my presence. [297]

* * *

Q. Mr. Ross, didn't these two lawyers in your presence on that day, in discussing the Fishermen's Marketing Act, say that it was an act that provided that if fishermen got together in a cooperative to sell their fish that under an order made by the Secretary of Commerce against the price arrangement that they have worked out, that they were exempt from the operation of the Sherman Antitrust Law? Wasn't that [298] discussed?

A. The two lawyers discussed the Fishermen's Cooperative Act, and as I am not a lawyer it is beyond my mentality or teaching or learning to understand what they were talking about.

Mr. Kenny: I think before we are through the intricacies of the fish business will convince us in which the real mentality lies.

Q. Do you recall also at that time whether or not those two lawyers did not discuss a decision that had been handed down in 1943 by District Judge McColloch of the Federal District Court in Portland, Oregon, affecting a fishermen's union in the Columbia River?

Mr. Rubin: Now, if your Honor please, that is objected to for the same reason, and for the further reason that any reference to court decisions is not within any of the issues in this case. [299]

* * *

(Testimony of Arthur Webster Ross.)

The Court: The objection is overruled. The question is, whether or not they discussed some decision by Judge McColloch.

The Witness: Yes, sir.

Q. (By Mr. Kenny): Did not Mr. Margolis say to Mr. Ekdale in your presence that Judge McColloch had treated the fishermen's union as a cooperative and say that because of the recognition given by modern federal statutes—

Mr. Rubin: I am going to interrupt, if you will pardon me, Judge Kenny, because I feel that that is a highly improper question. This is not a motion to dismiss out of the presence of the jury. It has no relationship to any of the issues of fact in this case, nor have any been suggested by the interrogating counsel. We submit that any such conversation is incompetent, irrelevant and immaterial, and certainly by counsel for the defendants, if anything, is a self-serving declaration and wholly without any issue in this case whatever.

Mr. Kenny: Your Honor, I can just answer that with one point, and I think the sooner the door is opened and the jury knows what the real controversy is here the better.

Mr. Rubin: The real controversy is made out, if your Honor please, by the indictment and the plea to the general [300] issue.

The Court: Yes, a plea of not guilty. [301]

* * *

The Court: How is that material?

(Testimony of Arthur Webster Ross.)

Mr. Kenny: It is material. In the first place, your [302] Honor, it will be material on the issue whether there has been equal enforcement of the law.

Mr. Rubin: How would that be material?

The Court: That is a question of law, Judge Kenny, that the judge must decide and it is quite inappropriate to make such a statement like that before the jury because the jury are not to determine that question.

Mr. Kenny: I will be perfectly glad to discuss this out of the presence of the jury. I merely want to point out the government has made their argument in the presence of the jury.

The Court: The government has merely stated their objections without stating any argument, and the insinuation that it would be unfair to the defendants to hear you out of the presence of the jury and hear their objections in the presence of the jury is hardly warranted by the record. If you care to argue the matter I will extend you that opportunity, but in any event it should be brief and to the point.

The jury will retire to the jury room. Remember the admonition. [303]

* * *

Mr. Kenny: I understand exactly the contrary. Where concealment exists, that is being denied us by this court.

The Court: Read that statement.

(The record was read.)

(Testimony of Arthur Webster Ross.)

The Court: I think, Judge Kenny, you owe an apology to this court. This court has not indicated a desire that anything should be concealed, or the slightest indication of unfairness to any of these defendants. Indeed, I think it would be rare where you could find anybody who has indulged the time to these defendants that I have indulged since this case began.

Mr. Kenny: I would owe your Honor an apology——

The Court: And you do so.

Mr. Kenny: Can I be heard? I would owe an apology if the record was as read by the reporter. It was not quoted correctly. I said the possibility of concealment exists on the original record. That is what was left out of that. And we are denied an opportunity to see those original records.

This is no reflection upon the court, and I hate to reflect on the reporter, but it doesn't reflect what I said.

The Court: Well, the witness here has indicated a willingness to bring his fish tags. [334]

The Witness: That is right.

Mr. Kenny: That is all we want.

The Court: What other books have you got?

The Witness: For the local fish coming in on the wharf side the Fish and Game tickets, I will bring into court the original tickets that you are requesting.

Mr. Kenny: That is what we want.

The Witness: I will bring a receiving record to show you the fish we bought from outside points.

(Testimony of Arthur Webster Ross.)

Mr. Kenny: That will be helpful.

The Court: Does that cover the data from which this report was made up?

The Witness: Yes, sir. Plus I have to give you the sales of every individual customer. That will be quite a voluminous——

The Court: Don't you have a book?

The Witness: Yes, a book. I will be glad to bring it all. I will be glad to bring it all.

The Court: For the period covered by that?

The Witness: The whole period covered by those figures.

Mr. Rubin: Could you bring that by 10:00 o'clock?

The Witness: I will endeavor to bring it by 10:00 o'clock, if I have to be up all night to do it.

The Court: I don't think there is any necessity for you to do that. [335]

Mr. Dixon: We could use another witness, perhaps, and permit Mr. Ross the additional time, if he wants it, to get this information. I hate to impose upon him if it is going to be an imposition in the sense that he has to work all night to get this material.

The Witness: I will be glad to get it by the 2:00 o'clock session.

Mr. Kenny: I might suggest, also, that when it is here it might be helpful for some of us to go over the record so it will save time; so, perhaps, if the government has another witness who could oc-

(Testimony of Arthur Webster Ross.)

copy the whole day we could look over the records, and that would save everybody's time.

Mr. Rubin: I think that will be very disorderly. May I make this suggestion? I think Mr. Ross suggested the 2:00 o'clock recess period. Mr. Ross, may I ask you this: Can you have one of your associates utilize tomorrow morning's time in obtaining that and have him bring them to court by tomorrow at 2:00 o'clock, so that you can be here available in person?

The Witness: That's right, I could.

Mr. Rubin: You will not, therefore, have to work all night, is that correct?

The Witness: Yes.

Mr. Rubin: Will that be satisfactory to your Honor?

The Court: I don't think this witness should be discommoded. [336] He is a witness here; he is not the government or defendant, and if it would suit his convenience better to return tomorrow afternoon at 2:00 o'clock, or the next day at 10:00 o'clock, he may be excused until that time, if the defendants want them that badly.

Mr. Kenny: We want them very badly, your Honor.

The Court: The records, however, when they will be available, I do not think should be made available to the defendants for just general examination. Only such examination as shall be made in the presence of the government agents and the defendant himself or one of his agents.

(Testimony of Arthur Webster Ross.)

Mr. Kenny: That is quite all right, your Honor. That is what we had in mind.

The Court: All right. You can be excused until—when can you get them?

The Witness: I will be here at 2:00 o'clock.

Mr. Dixon: I am sorry to interrupt again. I thought if there were any other questions of Mr. Ross, in accordance with Mr. Rubin's suggestion we might continue with the cross-examination and complete that, if your employee could have the actual records here tomorrow at 2:00. In other words, let's finish with you so you can get back to your business.

The Witness: That can be arranged, to have them delivered here at 2:00 o'clock tomorrow and I can be here at 10:00. [337]

The Court: Fine. You can be excused.

Now, Mr. Garrett?

Mr. Garrett: I have asked your Honor to imagine that the evidence——

The Court: I think we can all argue better tomorrow morning at 9:30. Why don't we come back here then?

Mr. Garrett: That is a good idea. It suits me fine.

The Court: Recess until 9:30.

(Whereupon, at 4:40 o'clock p.m., an adjournment was taken to 9:30 o'clock a.m., Thursday, March 20, 1947.) [338]

Los Angeles, California, March 20, 1947

9:30 o'Clock A.M.

The Court: Ex parte?

The Clerk: No, your Honor.

The Court: Local 36. Usual stipulation except for the jury?

Mr. Anderson: Yes, your Honor.

Mr. Garrett: So stipulated.

Mr. Dixon: So stipulated.

The Court: Mr. Garrett?

Mr. Garrett: I will make a short talk after a long interruption because I have had a chance to coalesce my ideas on relevancy in my own mind.

Now we have this situation in which the United States goes into a series of conferences and brings evidence of them here.

The Court: The United States goes into a series of conferences?

Mr. Garrett: Yes. I mean by producing evidence of certain conferences in the series, the evidence of the witness Ross.

The Court: You mean goes into the matter of conferences.

Mr. Garrett: Yes, as to the Zafran conferences, or quite a few of them. I don't mean to imply that the United [342] States was physically in those conferences.

The Court: I understand.

Mr. Garrett: The effect of that evidence produced by the Government, if competent and if relevant, can only be relevant on the issue of indicating the formation, nature and scope of the conspiracy.

That having been done, as I stated before, your Honor, the memorandum is used—not used under circumstances which to my mind were proper—the Government knowing it was being used I think should have called it to our attention, but we had it called to our attention otherwise, and examined the witness on it.

Now as to the question of the relevancy of contents of the conversations such as was brought out by my cross examination—I don't think there is any question as to its competency, and the examination proposed by Mr. Kenny—I want to say that I think that the relevancy of the evidence we seek to adduce by bringing out hitherto unexplored events in these conferences is threefold: first, evidence of what transpired between those present at those conferences I believe is relevant on the defense issue of entrapment.

The Court: Defense issue of what?

Mr. Garrett: Of entrapment. If the defense can show from the evidence of their own witnesses or by cross examination of the United States' witnesses that there is a reasonable [343] amount of evidence upon entrapment to go to the jury, the defense will be entitled to an instruction thereon and to have that issue, as a matter of defense, go to the jury.

Take the evidence of the witness Ross so far. Take his evidence as to the filing of documents and communications with the Department of Justice. Take his evidence indicating, or which may be a basis for indication on the part of the jury that combinations, combinations price-fixing in their nature, of these dealers and against the fishermen have been going on for a long time in the past.

The Court: There isn't any evidence of that. There is evidence in the record now that it was stopped in 1939 or '38 or some place in there. [344]

* * *

ARTHUR WEBSTER ROSS

the witness on the stand at the time of adjournment, having been previously duly sworn, resumed the stand and testified further as follows:

The Court: Ladies and gentlemen of the jury, yesterday afternoon the following question was asked by Judge Kenny of the witness on the stand:

“Did not Mr. Margolis say to Mr. Ekdale in your presence that Judge McColloch had treated the Fishermen's Union as a cooperative and say that because [376] of the recognition given by modern Federal statutes——”

He was interrupted by an objection by Mr. Rubin.

The objection to the question is sustained. You are instructed to disregard the implication and imputations contained in the question by Judge Kenny as put to this witness.

(Testimony of Arthur Webster Ross.)

Mr. Kenny: Now, your Honor, we of course submit to your Honor's ruling but I think we should make our record by completing that question.

Mr. Rubin: Now, if your Honor please, we object to that.

The Court: I think that was one of the reasons why we had a recess yesterday, so that we could discuss all of the matters. I have instructed the jury that they must disregard the implications contained in the portion of the question which was asked. Therefore it would be improper to continue with that question.

Mr. Kenny: Very well. I don't insist, your Honor, that we conduct it in the presence of the jury. But in order that we make our record complete, we would have to have that question completed and ruled upon and then we should be allowed to make an offer of proof. I think probably if it has to be conducted outside of the presence of the jury, we will submit to that request on the part of the Government. There will be no intelligible record for us unless that question is completed.

* * *

Q. (By Mr. Kenny): Mr. Ross, at the conversation that took place at this conference to which I referred in the question just asked and ruled upon by the court——

The Court: And, in order that the witness may be correct, that was the conference of June 11th?

Mr. Kenny: That is June 11th.

(Testimony of Arthur Webster Ross.)

Q. (Continuing)—did not Mr. Ekdale in the presence of Mr. Zafran, yourself, and others, dictate a proposed letter dated June 11th and addressed to the Fish Dealers of the Port of San Pedro, and I will show you a copy of that letter?. [379]

* * *

The Court: It will be marked for identification—what is there,—two letters?

Mr. Kenny: Two letters, yes.

The Court: A and B.

* * *

The Clerk: A is dated June 11th to the Fish Dealers of the Port of San Pedro, and B is addressed to the International Fishermen and Allied Workers, Local 36.

(The documents were marked as Defendants' Exhibits A and B for identification.)

The Court: The record will show the clerk has marked them A and B and handed them to the witness.

(The question was read by the reporter.) [381]

* * *

The Witness: No sir.

Q. (By Mr. Kenny): Did Mr. Margolis dictate such a letter in your presence?

A. Mr. Margolis did dictate such a letter.

Q. And did Mr. Ekdale make suggestions at the time that Mr. Margolis was dictating the letter, as to what should be put into the letter?

A. Not to my knowledge.

(Testimony of Arthur Webster Ross.)

Q. Did Mr. Ekdale take part in any discussion during the time that letter was being dictated?

A. The two lawyers, yes, did talk with each other.

Q. And that was written by Ekdale's secretary, written up by Mr. Ekdale's secretary?

Mr. Rubin: That is objected to as incompetent, irrelevant and immaterial, if your Honor please, who wrote the letter.

The Court: Overruled. Was that typed by Mr. Ekdale's secretary, or do you know?

The Witness: This Exhibit A?

Mr. Kenny: Yes.

The Witness: The tentative letter was dictated to Mr. Ekdale's secretary.

The Court: Is that the text of the tentative letter?

The Witness: This is the text of the tentative letter [383] by Mr. Margolis.

Q. (By Mr. Kenny): Now, I direct your attention to exhibit, for identification, number B, and ask you if that letter was drafted and dictated by Mr. Ekdale in your presence at that particular conference?

A. At that conference Mr. Ekdale dictated a tentative letter, in my presence, the subject matter of "B."

Q. And that was, in fact, the tentative letter that he dictated, was it not?

A. I don't know. It was dictated in my presence. I did not see the letter.

(Testimony of Arthur Webster Ross.)

Q. I will ask you if that letter is not the precise letter that was dictated by Mr. Ekdale at that time.

A. I do not know.

Q. Do you remember the substance of the tentative letter that was to be drawn, one from the Fishermen to you,—to the Fish Dealers, and one from the Fish Dealers to the Fishermen's Union? Do you remember that?

A. No, sir. [384]

* * *

The Court: He said he didn't remember.

Q. (By Mr. Kenny): You do remember that tentative letters were drafted at that time?

A. Yes, sir.

Q. And do you remember anything that was said by any of the parties as to the purpose of the drafting of those letters?

A. The only thing that I can recall was that both lawyers agreed to put down and state what each side was trying to arrive at some kind of an agreement whereby the strike would be over.

Q. For the purpose of settling the strike?

A. Yes, sir.

Q. Did Mr. Margolis at that time when he was dictating this letter, did you hear him say these words——

Mr. Rubin: Just a minute. If your Honor please, that is objected to as being incompetent, irrelevant, immaterial; not tending to prove or disprove any of the issues of this case; that the letter, if it is at all admissible, is the best evidence.

Mr. Kenny: Well——

(Testimony of Arthur Webster Ross.)

Mr. Rubin: Just a moment, Mr. Kenny. That if it is a [385] letter from the defendants to anybody under these circumstances, as the initial letter it is certainly self-serving on behalf of the defendants, and we submit, if your Honor please, it is improper to endeavor to get this letter before this jury by asking him if at the time of dictating the letter Mr. Margolis said certain things. We submit, if your Honor please, that we will object to this question on the ground that it is incompetent, irrelevant and immaterial, and on the other ground stated. If your Honor will read the letter, I think your Honor will know—— [386]

The Court: You were reading from Exhibit A?

Mr. Kenny: I was going to ask the witness if he overheard Mr. Margolis say certain words which are in the letter, but he also said them orally of course if he dictated them.

The Court: Which exhibit?

Mr. Kenny: That would be A.

The Court: The objection is sustained.

Mr. Kenny: I would like to be heard on it.

The Court: The objection is sustained. Proceed.

Mr. Kenny: So that I won't trench on this question, I will make an offer of proof on that at such time as your Honor indicates I can. You do not desire me to make this offer in the presence of the jury?

The Court: No. I think we better go ahead

(Testimony of Arthur Webster Ross.)

with the witness and the jury until 12:00 o'clock at least and perhaps at 2:00 o'clock for a few moments you may make an offer of proof, and by that time you will know what you want to offer.

Mr. Kenny: It has been suggested that I should offer, and I will offer, Exhibit A in evidence at this time.

Mr. Rubin: Same objection, if your Honor please, and on the further ground that there is no foundation laid, and particularly on the ground that it is self-serving. What these defendants write to someone else concerning any matter concerning this situation or others is not material at this time.

Mr. Kenny: Merely on the point of foundation, your Honor, Exhibit A was identified by the witness.

The Court: The objection is sustained. It will continue to be marked for identification.

Q. (By Mr. Kenny): Now I will ask you if you did not prepare with your attorney a letter dated June 14, 1946, addressed to the International Fishermen's & Allied Workers. I show you a copy of this letter.

The Clerk: C for identification.

(The document referred to was marked Defendants' Exhibit C for identification.)

* * *

Mr. Rubin: That is objected to as being completely beyond the scope of the direct examination;

(Testimony of Arthur Webster Ross.)

incompetent, irrelevant and immaterial as to any issues in this case. [388]

The Court: Let me see it.

(The document referred to was passed to the court.)

Mr. Kenny: I would like to be heard on that objection, your Honor.

The Court: The objection is sustained.

Mr. Kenny: I asked to be heard on that, your Honor.

The Court: You can be heard on it when you make your offer of proof.

Q. (By Mr. Kenny): I will ask you, Mr. Ross, at the conference you testified to on direct examination on May 20, which was participated in by Mr. Zafran and four other gentlemen, one of whom you believed to be Mr. McKittrick, if a letter dated March 1st, written by the Department of Justice——

The Court: Dated March 1st?

Mr. Kenny: March 1, 1946.

Q. ——written by the Department of Justice——

Mr. Rubin: Just a moment, Mr. Kenny. I think you know to what I am objecting and interrupting.

* * *

The Court: What do you propose to ask the witness concerning this letter, without reading the text of it?

(Testimony of Arthur Webster Ross.)

Mr. Kenny: I was going to ask him if the matter of the [389] Department of Justice——

Mr. Rubin: Just a moment.

The Court: No, no. What do you propose to ask him about this letter? Whether he saw it or got it or didn't see it or what?

Mr. Kenny: I want to ask him if he saw it and if it was not discussed at that meeting, and what the discussion was.

The Court. All right. That would be your question to the witness. Now Mr. Rubin indicates that he will probably object.

Mr. Kenny: Decisively, if your Honor please, because this is precisely the subject matter that is——

The Court: Just a moment. Do not state anything that was discussed outside of the presence of the jury. Just state the grounds of your objection, please.

Mr. Rubin: The question as given thus far is objected to on the ground that it is incompetent, irrelevant and immaterial, not tending to prove or disprove any of the issues of this case, and beyond the scope of the direct examination; no foundation laid.

The Court: The document will be handed to the clerk and given an identification number, No. D.

The Clerk: Defendants' Exhibit D. [390]

(The document referred to was marked Defendants' Exhibit D for identification.)

(Testimony of Arthur Webster Ross.)

Mr. Kenny: I might point out that there is no complete question before the court. I was interrupted before I had completed the question.

The Court: The complete question, if it involved the use of the text of the letter, is not only improper but objectionable. I asked you if your question anticipated that you would ask this witness if he saw this letter and if it was discussed.

Mr. Kenny: That will be obviously the purpose of my attempting to lay this foundation.

Mr. Garrett: The objection is to a foundational question, your Honor, as was the objection to the previous proffered exhibit.

Mr. Kenny: I think perhaps to clear the matter up we should have the question read.

The Court: Then suppose that you state your question, Judge Kenny, without quoting the text of the letter and refer to it by identification as Exhibit D. It now has an identification number.

Mr. Kenny: How far can I go in identification?

The Court: It has an identification, Exhibit D for identification.

Mr. Kenny: I can show it to the witness and ask him if [391] the subject matter of that was discussed? I am trying to comply with the rules here.

The Court: If in your question you will refrain—I am not trying to tell you how to ask your question except that counsel has objected to the use of this letter, or the text of it, so I think you understanding that what I am getting at is that

(Testimony of Arthur Webster Ross.)

until the court has passed on whether that letter or the text of it is or is not admissible the text should not be disclosed to the jury by the question, and it now having an identification number, whatever you want to say about the letter can be said by using it, as we always do, by an exhibit number for identification.

Mr. Kenny: Does that mean, your Honor, that I may not ask the witness whether the subject——

The Court: Suppose you ask the witness a question without disclosing the text of the letter until it is passed upon. If it is admissible, then of course the text can go to the jury.

Q. (By Mr. Kenny): You have seen Exhibit D, Mr. Ross?

A. (Examining document.)

The Court: The question is, have you ever seen that letter before?

The Witness: I have not. [392]

By Mr. Kenny:

Q. During the discussion at this time and place, did not Mr. Zafran say that the northern California fishermen had been told by the Department of Justice——

Mr. Rubin: Now just a moment, if your Honor please. We submit again that it is an effort to get before this jury improper testimony indirectly that they cannot get directly and which is completely immaterial to this case. We object to it on those grounds.

(Testimony of Arthur Webster Ross.)

We submit, so far as this line of questions is concerned, that it might well be made an offer of proof out of the presence of the jury and that your Honor can rule upon it then.

The Court: Any letter which the Department of Justice mailed to any other fishing association is immaterial and is incompetent for the purpose of proving any of the issues in this case which have yet been developed so far. The objection will be sustained.

Proceed.

Mr. Kenny: At this time, your Honor, without belaboring the point, to make the record I would like to offer Exhibit D in evidence.

Mr. Rubin: Same objection on the grounds stated, your Honor.

The Court: I will reserve ruling until after you argue [393] your offer of proof.

By Mr. Kenny:

Q. During that discussion on the 20th of May, did not Mr. Zafran, when you were discussing whether or not such a contract as he offered you was legal, did he not say to you that under the Sherman Act labor was a commodity and contracts of a cooperative, agricultural or horticultural association were exempt from the provisions of the Sherman Act?

A. I do not recall.

Q. Do you recall any discussion about the exemptions at that time, the exemptions that labor

(Testimony of Arthur Webster Ross.)

and agricultural and horticultural cooperatives have from the operation of the Sherman Act?

A. No, sir.

Q. Did not Mr. Zafran point out to you at that time——

A. On May 20th?

Q. On May 20th. It was discussed at later meetings, though, was it not, meetings at your office or Mr. Ekdale's office?

A. It was discussed between the lawyers in Mr. Ekdale's office.

Q. Was it not discussed that while the fish dealers might not combine——

Mr. Rubin: Just a moment. Now, if your Honor please, I object to the question on the ground that it is ambiguous, [394] it is compound, it is beyond the scope of the direct examination, and I submit, if your Honor please, that it is an effort to get before this jury matters that are wholly incompetent, irrelevant and immaterial and that cannot be gotten before this jury directly.

* * *

Mr. Rubin: Your Honor please, I am placed in the position of objecting to questions the effect of which will leave an inference with the jury and which will not be able to be eradicated as a result of those questions if they are improper. I am sorry that I am placed in the position of interrupting counsel at this time, and I realize that it makes for a very incomplete record, and may I suggest that these too be the subject of an offer of proof?

The Court: Yes, I think so. I thought we had

(Testimony of Arthur Webster Ross.)

more or less settled that this morning. But in the event that it wasn't, in the meantime the objection to that question will be sustained and you can include that in your offer of proof.

Mr. Kenny: I am not trying to bring anything before the jury that shouldn't be brought, but I do have to make my record. I owe that to my clients. I have not received [395] specific guidance on these questions as they arise and certainly the question in the Clayton Act was not discussed this morning, or the exemptions.

Q. Now in that discussion in Mr. Ekdale's office on the 11th of June, did there not take place a discussion between the lawyers in your presence of a decision by the National War Labor Board——

Mr. Rubin: Here I go again, your Honor. I am getting to feel like a jack-in-the-box in person, and I hate to do it, but it becomes necessary because your Honor has ruled time and again this morning concerning the subject matter of this discussion. The discussion of law between the lawyers and whether or not these things are legal or illegal, we submit, if your Honor please, is completely immaterial to whether or not these defendants have conspired to do the things the indictment charges them with doing. We submit that is the issue and that is the issue to which evidence should be directed. We object on that ground.

The Court: I do not think that this discussion between the lawyers on that date is admissible.

Mr. Kenny: Your Honor is ruling then——

(Testimony of Arthur Webster Ross.)

The Court: And I am sustaining the objection to that question because by the way it begins it indicates that it comprehends some other legal discussion between lawyers. You may reserve that to your offer of proof as well. [396]

Mr. Kenny: Since I have other questions, if it is your Honor's ruling that no words uttered by lawyers at that conference can be used to cross examine this witness, I will abide by it, but I need that guidance.

The Court: I would suggest that perhaps time might be saved if you waited and made it all in an offer of proof, whatever you propose to prove, but in the present state of the record and the present state of these proceedings I cannot see how any discussion that was had between the lawyers concerning any law or any decision or any letters by anybody else to anybody else is material or competent or admissible at this time.

Mr. Kenny: I am sure I will be able to convince your Honor at that time. I don't want to bore the jury with it, but I think with an orderly development of the case we might come to grips with the issue now outside the presence of the jury and we will make an offer of proof, if your Honor cares to do that.

The Court: Do you have other things that you can continue with the cross examination of this witness on?

Mr. Kenny: I intend to develop all of these negotiations between the parties leading up to the

(Testimony of Arthur Webster Ross.)

strike and during the strike and leading up to a purported settlement of the strike. If I have to make an offer of proof on all of it, I want the jury to know it and I want the jury to know the [397] whole background of those negotiations.

Mr. Rubin: We want the jury to know all the material evidence too, your Honor please.

The Court: Of course everybody wants the jury to know a lot of things but, as you know, Judge Kenny, we have rules of evidence which control the flow of information and evidence to the jury.

If you are unable to proceed further with this witness until you make an offer of proof, I will excuse the jury again and you may make your offer of proof at this time.

Mr. Kenny: That will be satisfactory.

The Court: All right, ladies and gentlemen of the jury. Remember the admonition.

(Whereupon at 11:20 o'clock a.m., the jury retired from the court room.) [398]

* * *

Mr. Margolis: In making this offer of proof, in order that the record may be clear, because I was personally involved, I will refer to myself as "Mr. Margolis. [404]

* * *

The Court: I want to get some comprehensive statement of the offer of proof.

Mr. Margolis: My offer of proof will refer to the meetings of June 7th, June 10th and June 11th concerning which the witness Ross testified in response to questions by Mr. Garrett.

We offer to prove if the witness were asked appropriate questions and allowed to answer them, that he will testify as follows: That at the meeting of June 7th at which were present himself, Mr. Ekdale, Mr. Margolis, several other owners representatives of fish markets located on the same dock or wharf as was and is the plant of Mr. Ross, and a number of other fishermen, that in the course of that discussion reference was made by Mr. Margolis, Mr. Zafran, and others of the fishermen to the letter of May 27, 1946, which is in evidence as People's Exhibit 5, and particularly to the last paragraph of that, reading:

“The purpose of this decision was to expedite matters and get a decision from the government agencies in reference to the legality of signing a minimum price agreement.” [405]

That in connection with that, Mr. Margolis, Mr. Zafran, and others stated as follows: that——

The Court: To whom?

Mr. Margolis: Stated in this conference, stated to everybody who was present, your Honor. I have already indicated who was present, and these statements were made, all of them, made in the course of the discussion between the parties. I will state Mr. Ross will testify that he and Mr. Ekdale and several other owners or representatives of fish dealers were there speaking for the fish dealers, and that Mr. Margolis, Mr. Zafran and several other fishermen were there speaking for Local 36 of the Fishermen's Union, one of the defendants in this

case, and that was so understood by all of the parties at that conference. What I am about to relate were discussions that took place between the parties acting in the relationship that I have indicated. Referring again to the letter of May 27, 1946, it was stated by Mr. Margolis, Mr. Zafran, and others, that the fishermen had had a similar experience that they were having here with respect to the Alaska fishermen, that the Alaska fishermen had for many years negotiated minimum price contracts covering both fishermen who did not own their boats and fishermen who did own their boats and gear, and when the season for 1946 came around the Alaska Salmon Packers Association refused to sign an agreement for that season because it [406] represented to the union, the same international union that is the parent body of Local 36, that if it signed such an agreement it would be prosecuted by the anti-trust division of the Department of Justice. [407]

That in that case the International said the fishermen will not go fishing in Alaska until such time is there is a minimum price agreement because they want to know what they are going to receive for their product and they are not going to buy a pig in a poke.

That pursuant thereto there was an interchange of correspondence, which took place only after the fishermen said, we will not fish——

The Court: You mean that is in the Alaska case?

Mr. Margolis: Yes. I am relating the conversation, your Honor, which is part of the offer of proof. I am relating the conversation, what I am stating now, so that the record will be entirely clear, which is what was stated by Mr. Margolis, Mr. Zafran and other fishermen at this meeting of June 7, 1946 with the parties whom I have indicated. That is what I am relating now, what was stated by them.

May I have that last portion?

(The record referred to was read by the reporter, as follows:

("That pursuant thereto there was an interchange of correspondence, which took place only after the fishermen said, we will not fish——")

Mr. Margolis: ——without knowing what price we are going to get for the fish which we catch, and that after such refusal the Department of Justice, through Mr. Wendell [408] Berge, wrote a letter to the Alaska canned salmon industry advising it that there would be no criminal prosecution because of the execution of such a contract fixing minimum prices, and that pursuant to that letter a contract was signed.

The Court: Is that the letter of March 1st?

Mr. Margolis: That is the letter of March 1st.

The Court: You offer to prove that that letter was exhibited to this witness?

Mr. Margolis: I don't think that the letter was exhibited to the witness. It was referred to. I am merely offering to prove at this time——

The Court: That some letter?

Mr. Margolis: No, that this letter was referred to in the conversation.

The Court: How can this witness know if he didn't see the letter?

Mr. Margolis: All right. I am offering to merely prove what was said in the conversation. This letter, I am sure, at a later date—that will be part of my offer of proof—was shown to Mr. Ekdale. Whether Mr. Ross looked at it or not, I don't remember. I don't want to make an offer of proof as to facts which are not clear in my mind.

May I have that last part again, please?

(The record referred to was read by the reporter as follows: [409])

("* * * through Mr. Wendell Berge, wrote a letter to the Alaska canned salmon industry advising it that there would be no criminal prosecution because of the execution of such a contract fixing minimum prices, and that pursuant to that letter a contract")

Mr. Margolis: Change that to a series of contracts were signed, which contracts covered both fishermen who had no interest in boats and fishermen who owned the boats from which they were fishing, and that pursuant thereto the boats did go

to Alaska, the fishing season was conducted, and of course there had been no criminal prosecution.

It was stated further—I am referring to the same people talking.

The Court: This is on June 7 yet, is it?

Mr. Margolis: Yes, your Honor; June 7th.

That people did not believe that the Department of Justice, when the chips were down, would treat Local 36 any differently than they treated the Alaska canned salmon industry. [410]

* * *

Mr. Margolis: And furthermore that the Department of Justice had already gotten its fingers burned when it had tried a similar case in Portland before Judge McColloch, and that Judge McColloch had thrown the case out of court.

Furthermore, that the War Labor Board had held during the period of the war that prices paid to fishermen owning boats were to be treated as wages because in truth and in fact and from an economic standpoint that is what they actually were, and this had also been.

In the conversation reference was also made to the Fishermen's Marketing Act at that time or at a subsequent meeting—I am not sure what the evidence will show in that regard, but it will show either at that meeting or at the meeting of June 11th, or the meeting of June 10th, one of these meetings—a memorandum with regard to the Fishermen's Marketing Act was presented collectively to the representatives of the fish dealers and was

looked at, I think, by all [412] of them, but anyway it was presented to them, and the matter of the Fishermen's Marketing Act was dismissed, being claimed by the representatives of the fishermen, whom I have already mentioned at the meeting of June 7th, that the Fishermen's Cooperative Marketing Act did exempt fishermen collectively bargaining for prices through an organization from the provisions of the Sherman Antitrust Act as long as they did not combine with processors or middlemen for the purpose of fixing prices to the consumer.

The same persons speaking also said at the meeting of June 7th that the union did not insist at that time and had never insisted upon the precise contract which was submitted to the dealers and which is in evidence as Government's Exhibit No. 3, but that the problem with which the union was concerned was the following problem, that fishermen before going out fishing do not know what price they will receive for their fish, that when they come back from a fishing trip they may be offered a price which not only doesn't pay them for their labor but which doesn't even compensate for the expenses of the trip, that the effect of this has been to drive people out of the fishing industry, to hurt the whole fishing industry, and by decreasing the supply of fresh market fish to actually raise prices to consumers, and that the fishermen were interested in stabilizing the industry so that every section of

the industry could benefit, and by increasing the volume of fish actually lower prices to the consumer. [413]

That at least as a temporary matter, and until all of the legal problems had been worked out the Fishermen's Union was willing to consider entering into any kind of an agreement through which the individual fisherman, before he went out on a trip to catch fish, would know what price he would receive for his fish when he brought it in, and that in the absence of such a contract, with the uncertainty of things as they were, the fishermen simply could not continue fishing, and that it was unfair of the dealers or of anybody else to expect fishermen to go out and fish without knowing whether they are even going to get back the expense of their trip. Numerous instances were cited where fishermen had gone out, believing that a certain price would be paid, and had come back with a load of fish, and in order to avoid breaking the law by destroying the fish, they had to sell for a price which was less than the amount which it actually cost them on the trip, let alone any compensation for their labor.

That in response to this Mr. Ekdale, Mr. Ross, and I think one or two of the other representatives of the fish dealers, spoke and said that they recognized the injustice, the unfairness to the fishermen, that certainly a fisherman was entitled to know what he was going to get for his fish before he went out on a trip, that the whole industry was being

hurt and prices to the consumer were in fact being increased [414] by cutting down on the volume of fish, by reason of the failure of the fishermen knowing in advance, or the inability of the fishermen to know in advance, what price they would receive for their fish.

But that these dealers had been indicted, or had been either indicted or prosecuted or proceeded against, I believe it was said in 1939 or, for the sake of my offer of proof, several years before the time of that conference, that they had had their fingers burned and that they were not going to take any chances in entering upon any kind of an agreement which the Antitrust Division might claim was in violation of the Sherman Antitrust laws.

In addition to that, Mr. Margolis and Mr. Zafran stated that there was a great difference between the proceedings referred to by the Fish Dealers and the present contemplated or proposed arrangement between the union and the Fish Dealers in that the proceedings referred to by the Fish Dealers involved a combination between fish dealers for the purpose of fixing the price which they would pay to the fishermen and in turn the price for which they would sell their fish to the wholesaler or peddler or anyone else to whom they did sell, and that that was quite different from an agreement which would tell a fisherman how much he was going to get for his fish before he went out on a trip and, in effect, would tell him how much he could expect to get for [415] his labor.

The representatives of the Fish Dealers——

The Court: This is still on June 7th?

Mr. Margolis: This is still on June 7th.

The Court: It was a long conference.

Mr. Margolis: I would say that this conference lasted, my recollection is, a couple of hours, and I am sure I am omitting much more than I am including, if the court please. If there is anything wrong in my offer of proof it is an omission.

The dealers then stated, and I include Mr. Ekdale as a representative of the dealers, that they felt that there was justice to our position and suggested that Mr. Ekdale and Mr. Margolis consider the possibility of devising some other type of an agreement through which the fisherman could have his price fixed for a particular voyage before he went out on a trip, and that they felt that if some such agreement could be worked out that it could be entered into without even the slightest fear of a claimed violation of the antitrust laws, and that they would be willing to enter into such an agreement.

The Court: Just a moment. Let me hear that statement over again.

(The statement referred to was read by the reporter, as set forth above.)

The Court: Go ahead.

Mr. Margolis: It was then stated, either by the fishermen representatives or by the dealer representatives——

The Court: What are you going to offer to prove? An offer of proof is that somebody said something, not just anybody.

Mr. Margolis: I think the witness will testify that either one or the other—I think when my offer is completed it will be quite clear—that either one or the other of these two groups suggested that Mr. Ekdale and Mr. Margolis consult further on the matter and that a meeting be held in a few days to see if the details could be worked out, that whichever side made the suggestion the other side acquiesced in the suggestion, and it was agreed that should be done, and the meeting at that point broke up with the understanding that Mr. Ekdale and Mr. Margolis would try to arrange to set a date very early to work out this sort of an agreement.

I want to confine myself to what we can prove through this witness for the purpose of the offer of proof. Does your Honor want me to go on with matters which cannot be included with this witness but which are part of the picture?

The Court: The only thing we are concerned with now is the cross examination of this witness.

Mr. Margolis: Then I will eliminate certain other [417] things which occurred to which this witness could not testify.

I offer further to prove that the defendant Jeff Kibre had been absent in the East, that this was known to Mr. Ross, that the defendant Jeff Kibre had been absent in the East during the entire time from the beginning of May on and even before, and

that he had not participated in any of the transactions with Mr. Ross in any of the meetings, that on June 9th or 10th Mr. Kibre returned from the East, and that on June 10th, at Mr. Kibre's request, a meeting was held in Mr. Ross' office, which he has described, at which were present—— [418]

* * *

Los Angeles, California; Thursday,
March 20, 1947; 1:45 p.m.

Mr. Margolis: I want to return for a moment to the meeting of June 7 and continuing with the offer of proof which was begun during this morning's session.

At the meeting of June 7 previously referred to, the fishermen's representatives who have been previously identified as having been present at that meeting, stated that they were willing to and would withdraw their demand for the contract which is in evidence as Government's Exhibit 3, but that they did insist on some arrangement whereby the fishermen's price would be agreed to before he went out fishing for [420] the fish which he would catch on that particular trip.

This was part of the discussion previously referred to in the offer of proof and leading up to the reference of the matter to the attorneys, Mr. Ekdale and Mr. Margolis.

Further, with regard to the letter which is in evidence as Government's Exhibit 5, it was stated that the fishermen in that letter had meant that

they believed that the Antitrust Division, when finally forced to render an official decision from Washington, would, as it had done in the case of the Alaska fishermen, render a similar opinion or give a similar statement here. And it was that matter that was referred to in the said letter in evidence as Government's Exhibit No. 5.

I want to say that the letter was not referred to in that conversation as being in evidence as Government's Exhibit 5; I am merely identifying it here in that way.

Now returning to the June 10 meeting, and I think that I had previously stated in my offer of proof who was present at that meeting—at the meeting Mr. Kibre stated that he had just returned from the East and had just become fully cognizant of the matters which had taken place in his absence, which included the presentation of the contract, the demand that it be signed and the beginning of the strike and the activities pursuant thereto; that he had contacted Mr. Margolis and that Mr. Margolis had told him—— [421]

The Court: Let's see. You weren't present on June 7th?

Mr. Margolis: I was not present. I am making an offer, your Honor, as to—on June 7 I was present; yes. On June 10 I was not present, but I am making an offer of proof——

The Court: You were present on June 11?

Mr. Margolis: I was on June 7 and June 11.

I was not present on June 10, but I am making an offer of proof with regard to what happened.

The Court: On June 10?

Mr. Margolis: On June 10, upon information that I have received from persons who were present at that meeting. I do not purport to know any of these things with regard to June 10 of my own knowledge.

I am still stating as my offer what Mr. Kibre is saying at this meeting of June 10.

Mr. Kibre said that he contacted Mr. Margolis; Mr. Margolis had informed him of the meeting of June 7, and that he had also learned of that meeting from other union officials; that Mr. Margolis had told him that he had a pretty definite idea for a specific kind of an agreement which could be entered into which could provide for an agreement with respect to each boat before it went fishing, for the price that would be paid for the fish on that particular trip, and that Mr. Margolis had stated that he had talked over the phone to Mr. Ekdale about this and that Mr. Ekdale, [422] while not finally committing himself, had said that he thought that this was a possible basis for settlement, and that Mr. Ekdale thought that probably this approach eliminated even the questions which he had in his mind concerning any possible evasion or claim of evasion of the Sherman Antitrust Act.

Q. That Jeff Kibre went on further to state that he was very anxious to settle this matter, to get deliveries of fish resumed to these dealers, although

fishing had been going on and was going on at that time, was being delivered to others, that he was anxious that these dealers, too, would start getting some of the fish that was being caught, and that he thought that the suggestion which Mr. Margolis had made——

Mr. Schwartz: Who is "he,"—Ekdale or Kibre?

Mr. Margolis: Kibre. This is all what Kibre is saying. He thought the suggestion of Mr. Margolis was one which could be considered, and that there ought to be an attempt to work out either that or something along those lines, so that the situation could come back to normal.

There was further discussion along the same lines that had taken place at the meeting of June 7th, some of the same decisions and laws were referred to. In addition, Mr. Kibre pointed out at that meeting that there was then pending in San Francisco a civil action by some dealers against the San Francisco Local of this International attacking the closed shop provision of an agreement identical to the one which had originally been proposed by the union in San Pedro, except for the fact that the San Francisco agreement contained a closed shop provision, whereas the Southern California agreement contained neither a closed shop provision, nor any kind of [424] security provision resembling or relating to, in any way, a closed shop.

That he thought that nevertheless the action in the north might clarify some of the questions which were in the minds of the parties, because certainly

if the court up there held that the closed shop provision was legal, there could be no question about the rest of the agreement being legal, and that he was confident that the court would have to so hold, and that he felt that he was perfectly willing and that the union was perfectly willing to hold in abeyance further demands for the contract originally proposed until the action in the North was brought to a conclusion, there was a decision there by which the parties probably could be guided in toto or in part.

And that, therefore, something along those lines ought to go into any agreement which was entered into in settlement of the strike then pending.

Mr. Kibie also stated—and this was similarly stated by some of the other fishermen who were present—that the prices that they were asking for, the union was asking for in its original agreement, was certainly reasonable, and that their reasonableness was evidenced by the fact that the original agreement which had been proposed contained O.P.A. ceiling prices which had been computed on the basis of average 1942 prices, and that certainly when everything [425] else had gone up and the cost of living had gone up, and the cost of supplies to the fishermen had gone up, when every item which the fishermen had to pay out had gone up, wages generally had gone up, that it would not be unreasonable to ask not for the top price which had been paid in 1942, but the average price which had been paid in 1942; and that he thought that was very, very reasonable, and he couldn't see how any

reasonable man could object to it. And if it was unreasonable, then an action could be brought under the Fishermen's Marketing Act by the Secretary of the Department of Agriculture, but he was confident that there would be no basis for such a proceeding.

He stated, however, that in view of the attitude taken by the fish dealers that he was willing to abandon, for the present, until the law was clarified further—although he thought it was clear enough at the time—until it was clarified further, the question of the original contract, and proceed along the general lines of the suggestion made by Mr. Margolis.

He stated that he had asked Mr. Margolis to attend that meeting of June 10th, but that Mr. Margolis had either a court engagement or a previous appointment and couldn't be there, but that Mr. Margolis could meet at 9:00 a.m. on the next day, June 11th.

He then suggested that such a meeting be held. During [426] the course of his statements the representatives of the fish dealers, which included, as I have stated, Mr. Ross, Mr. Ekdale, and several other fish dealers, stated that they still held to their original position that they would not sign the contract, which for reference is Government's Exhibit 3, but that they were very anxious to settle the dispute, and they were certainly agreeable to considering the proposal advanced by Mr. Margolis, Mr. Ekdale particularly stating that he thought that an agreement could be worked out which would meet every possible legal objection. [427]

When the proposal was made by Mr. Kibre for a meeting of June 11th, representatives of the fish dealers stated that they would be very glad to meet in Mr. Ekdale's office at 9:00 a.m. on June 11th, and the meeting ended on that note.

The next day, June 11, 1946, a meeting was held in the office of Mr. Ekdale in San Pedro. Present at this meeting were Mr. Ekdale, Mr. Ross, and one or two other fish dealers or representatives of the fish dealers, Mr. Kibre, Mr. Zafran, Mr. Margolis and perhaps one other fisherman.

This meeting started shortly after 9:00 a.m. and broke up just about noon.

At the beginning of the meeting Mr. Margolis stated that as the fish dealers had previously been informed on several occasions, the main thing in which Local 36 was concerned was that arrangements be completed so that when a fisherman went out to catch a load of fish he could know in advance what price he would get for his fish, it therefore determining whether or not he could afford to go fishing and receive a return for his labor on that fishing trip, and that he thought that an agreement providing for negotiations between the union, as the representative of the individual fishermen, and the fish dealers or fish dealers involved, separately for each trip before each fisherman went out on the trip was a perfectly proper and unquestionably legal method of obtaining the objective, which was the basis of the demands made by [428] Local 36.

The Court: You are talking now?

Mr. Margolis: Yes. I use only the third person for the sake of the record.

The Court: I understand. I was just wondering whether or not that was Mr. Kibre or you giving that final legal opinion.

Mr. Margolis: As you know, your Honor, attorneys are sometimes called upon to give legal opinions to their clients. They do the best they can.

I wonder if I could perhaps have Exhibits A and B. It would help me as I go along with my offer.

(The documents referred to were passed to counsel.)

Mr. Margolis: I think I might shorten my offer of proof, although it might be objected to as a conclusion, and if there won't be that objection I could shorten it by saying that each of the matters set forth in Defendants' Exhibits A and B for identification were discussed.

As I say, that is a conclusion. If there is no objection to making the offer of proof in the form of that conclusion, it will save time. I want to make my offer technically correct.

I wonder if the Government would state if there is any objection to that offer from the standpoint of a conclusion, not from any other standpoint.

* * *

Mr. Dixon: I do not see any objection to it on that ground, your Honor. It is as to the form and

not the substance. We wouldn't object as to the form, in the interests of expediting the proffer of proof.

Mr. Margolis: After this discussion, Mr. Ekdale called his secretary into his office. Incidentally, during all of this time there were present the parties whom I have mentioned at the outset, and while the main discussion was between Mr. Margolis and Mr. Ekdale, Mr. Kibre participated and Mr. Ross participated, and from time to time Mr. Ekdale would ask Mr. Ross whether that was okay with him, and Mr. Ross would say yes, or no, as the case would be. It was that kind of a conference, and discussion with everybody participating, although the principal discussion, let's say the most words, [430] were spoken by the two attorneys.

The Court: You mean you have to have somebody swear to that?

Mr. Margolis: I think the Court can take judicial notice of that.

Then Mr. Ekdale called his secretary in and either Mr. Margolis or Mr. Ekdale began to dictate the letter, which is Defendants' Exhibit A. Whoever began to dictate the letter, the letter was dictated by the two attorneys together, that is, one attorney would dictate a sentence and the other attorney would say, well, let's make a change here, let's change this or let's put a comma in, or let's make two sentences out of that, and so with the two attorneys cooperating or endeavoring to reach an agreement in that way this letter, Exhibit A, was dictated.

In the course of it the two attorneys from time to time referred questions to their respective principals as to wording about matters contained in this letter.

Then when the letter, Defendants' Exhibit A, was completed it was read back to everybody—by everybody I mean everyone who was present in the room—by Mr. Ekdale's secretary, and I think one or two or perhaps a few more changes were made as it was read back, and the attorneys turned to their respective principals and said, is that satisfactory, and everybody who was asked that question said, yes, that is [431] satisfactory.

Then Mr. Ekdale dictated—this followed immediately afterwards in the same meeting—dictated Defendants' Exhibit B with Mr. Margolis from time to time making a suggestion or two. The similar procedure was followed as to Defendants' Exhibit A. After the letter was dictated it was read back and perhaps a change or two was made. Anyway, it was read back and the parties stated it was satisfactory.

By that time it was very close to noon, 12:00 o'clock, and Mr. Margolis stated that he had an appointment which he had to keep in Los Angeles by 1:00 p.m., and that he would have to leave and couldn't wait for the letters to be typed up, but inasmuch as they had been read back it would be pretty much only a question of proofreading the letters as to correctness, and that he would go on to Los Angeles.

Mr. Kibre stated that although he had already taken up with the union the general approach set forth in the letters, as a matter of procedure he would have to get formal approval for these letters, for the letters to be signed, but there was no doubt but that approval would be obtained. [432]

Mr. Ross stated that he would have to talk to some of the other fish dealers, but there was no question that everybody would be willing and agreeable to signing these agreements, and there was no reason why resumption of delivery of fish by the fishermen involved to the dealers could not start, perhaps, the next day or very shortly thereafter.

Arrangements were made for one of the fishermen who was there to come back and pick up the copies of the letters when they were completed, so that the union would have copies to present to a meeting to be called that afternoon.

He stated further that as soon as the formalities had gone through, which would be that day or early the next day—no specific time limit being set—that the agreements would be executed and the strike would be terminated.

By the agreement, so the record will be entirely clear, I am referring to Defendant's Exhibits A and B, the union, Local 36, to execute Exhibit A, and the fish dealers to execute Exhibit B, and the interchange of letters to constitute the agreement between the parties, the interchange of letters which are in evidence here.

The Court: Do you propose to offer proof that they were signed by the union and the dealers?

Mr. Margolis: No; I am going to show that they were never signed.

The Court: You what? [433]

Mr. Margolis: I am going on with my offer of proof now to show they were never signed.

Thereafter Mr. Zafran contacted Mr. Ross and Mr. Ekdale, either late that afternoon or early the next day——

The Court: That is June 11th?

Mr. Margolis: Either late the afternoon of June 11th or early the day of June 12th, 1946, and advised them that the union had gone through the procedure of approving the form of settlement previously referred to, and that they were now prepared to execute the agreement in accordance with the discussion which had taken place at Mr. Ekdale's office on June 11th.

Mr. Ross and Mr. Ekdale said that they had not yet been able to complete arrangements for signing their part—their letter, that is, the letter which is marked for identification as Defendants' Exhibit B, but that they expected to be able to do so shortly.

There were several such conversations which took place over the period between June 11th and June 14th. On the date of June 14th, 1946, the union, Local 36, defendant here, received from the fishermen—excuse me a moment. I was inquiring as to

whether we had the original. We think the government has the original of this letter. Is that right?

Mr. Rubin: We have the original. Would you like it a minute? [434]

* * *

Mr. Margolis: May we substitute the original for the copy which has previously been marked?

The Court: Do you have any objection? [435]

Mr. Rubin: No objection.

The Court: Call it C.

Mr. Margolis: On June 14, 1946, Local 36 received the letter which has been marked Defendants' Exhibit C, for identification, signed, as appears thereon, by various fish dealers, including the witness Mr. Ross; that the name "Ross" on there is in the handwriting of Mr. Ross, as his signature, on behalf of the American Fisheries, Inc.; that the other signatures thereon are the signatures of the other fish dealers whose places of business are located on the same wharf as the place of business of Mr. Ross, and that this letter was prepared, signed, and sent by the signatories to Local 36, the said fish dealers acting collectively in sending this letter to said Local 36. That the letters marked for identification as Defendants' Exhibits A and B, respectively, were never signed—well, Defendants' Exhibit B was never signed by the company—by the fish dealers. May I have your 253?

The Court: By the union?

Mr. Margolis: Exhibit B was to be signed by the fish dealers. Exhibit A was to be signed by the union. [436]

And that the union did sign and send to each dealer a copy of Defendants' Exhibit A, dated June 11, 1946. I think that completes our offer of proof. Of course, along with that offer of proof we would consider as an offer the documents A, B and C.

Mr. Garrett: In order to save time, if your Honor please, may it be stipulated that I have made the same offer of proof and the documents with the witness Ross on the stand under cross-examination by me?

The Court: Surely. In other words, I still assume the same rule would apply: Anything offered by one defendant would be on behalf of all the rest of them, and any objection, unless it is specifically disclaimed.

Mr. Garrett: Then it will be so stipulated?

Mr. Rubin: So stipulated.

Mr. Dixon: May the Court please, I will be very brief.

The Court: Let me ask a question first.

Mr. Dixon: Yes, your Honor.

The Court: On direct examination, the last conversation which you asked Mr. Ross about in which any of the defendants participated was May 29, according to my record here, is that correct?

Mr. Rubin: I believe there was further testimony that there was a conversation with Mr. Sawyer during the pendency of this altercation. [437]

The Court: That was on the day of the strike.

Mr. Rubin: That is correct.

The Court: Where he talked to him, which was May 29, was it not?

Mr. Rubin: That is right, your Honor.

The Court: And thereafter you asked the witness Ross about no conversations with any of the defendants?

Mr. Rubin: That is correct, as I recall.

The Court: That was my impression on reading the record.

Mr. Dixon?

Mr. Dixon: May it please the Court, our objection, of course, to this is that it is way, way beyond the scope of the direct examination of the Government and is immaterial.

The Court: I think it is, counsel. I think there is nothing better settled than that a person who calls a witness may limit the scope of cross-examination by limiting his own direct examination of the witness, and the direct examination was limited to conversations, the last one of which was on May 28 or 29, whichever date that was, and then only with the defendant Sawyer.

The examination permitted yesterday by Mr. Garrett of the witness Ross going to his credibility is a matter which is with the control of the Court, and I think is sufficient examination to test the witness' credibility and his recollection so that the jury can determine whether he is or is not [438] a credible witness, or his recollection is one that can be relied upon.

On the basis that all of the things offered in the offer of proof made by Judge Kenny and by Mr. Margolis, and joined in by the remaining defendants, is beyond the scope of the direct examination, the objection will be sustained.

I do not mean to indicate by that, that under appropriate circumstances or the orderly proof that these same things may or may not be subsequently admitted. That I am not indicating at the present time, but I am indicating that they are not admissible by further cross-examination of this witness along those lines.

Call the jury down. [439]

* * *

Mr. Garrett: If your Honor please, before Mr. Kenny resumes may I move that the exhibit marked for identification as Defendant Sherman's Exhibit A be received in evidence?

The Court: It is received in evidence.

(The document referred to was received in evidence and marked Defendant Sherman's Exhibit A.)

The Court: Mr. Ross, will you resume the stand?

ARTHUR WEBSTER ROSS

the witness on the stand at the time of recess, resumed the stand and testified further as follows:

The Court: Judge Kenny, you were cross-examining him.

Mr. Kenny: Yes, your Honor.

Cross-Examination
(Continued)

By Mr. Kenny:

Q. Mr. Ross, are you familiar with an organization known as the Western Seafood Institute?

A. Yes, sir.

The Court: By the way, I think I should advise the jury that there was an objection pending, was there not, to a question?

Mr. Kenny: To a partial question, your Honor.

The Court: The objection was sustained.

Q. (By Mr. Kenny): You were a member of that, weren't you, Mr. Ross? A. Yes, sir.

Q. What did the Western Seafood do?

A. It was a function of all of the fish dealers in Southern California from Santa Barbara to San Pedro, centralized so that we could cope with the OPA in interpreting regulations.

Q. And you, as a matter of fact, hired an attorney from the OPA for that purpose, didn't you?

A. At one time; yes.

Q. Mr. Bradbury, was it?

A. Mr. Bradford, I believe it was; a colored gentleman.

(Testimony of Arthur Webster Ross.)

Q. Did you ever hire a Mr. Aliotto as attorney for you? A. No, sir.

Q. You are still a member of that institute?

A. No, sir.

Q. When did you terminate your membership?

A. Within the past year. As a matter of fact, the institute is dissolved.

Q. As a matter of fact, the institute was dissolved when this case was brought, wasn't it, about the time this indictment was returned the fish dealers broke up their organization?

A. Later than the strike period.

Q. Later, but how much later?

Mr. Rubin: Just a moment, if your Honor please. That is objected to as being certainly immaterial and beyond the scope of the direct examination. There is no reference in this case to a Western Seafood Institute for the purpose of disseminating information about the OPA.

The Court: It would be admissible on the ground of bias or interest of the witness. That is the only possible materiality that I can see.

Mr. Kenny: Your Honor doesn't want to instruct the jury [442] for that limited purpose, do you, at this time?

The Court: That is the only materiality that I can see.

Mr. Rubin: We would like to ask counsel what the materiality is.

Mr. Kenny: The witness testified that there was

(Testimony of Arthur Webster Ross.)

no organization of fish dealers. Now we have an admission that he was in an organization of fish dealers.

The Court: Then you are going to the bias or credibility of the witness?

Mr. Kenny: We want to pursue this to show that these fish dealers combined and made it necessary for the fishermen to seek a price agreement to protect themselves against the organized fish merchants. Now that is the purpose of the thing.

Mr. Dixon: If the Court please, I rise to object to this line of questioning and any further line of questioning of this witness outside of the scope of the direct examination.

The Court: If that is the purpose of it, the objection is sustained, and the jury are instructed to disregard the remarks of counsel. Self-defense is not a defense in a conspiracy case or a violation of the antitrust law.

Mr. Kenny: Your Honor, will it be impossible then for me to ask this witness questions——

The Court: If it is that purpose and the remarks which [443] you have just made. I have instructed the jury are to be disregarded by them. They have no place in this case.

Mr. Kenny: I have your Honor's ruling on this Western Seafood Institute and we will drop that for the time being.

The Court: It is admissible to test his credibility or to show his bias. If you want to cross-examine him on that and for that limited purpose,

(Testimony of Arthur Webster Ross.)

that is correct, but if it is for the other purpose then it has no place in this case. [444]

Mr. Kenny: I am more interested in getting to the jury the operation of the fishing business, and I wondered if your Honor's ruling was going to limit me.

The Court: I don't know. Proceed with the question.

Mr. Kenny: The question I am now going to pursue was the actual mode in which these dealers buy their fish. I am going to try to prove that they buy it collectively.

The Court: Ask your question how they buy their fish. I can't read your mind.

Mr. Kenny: I am telling you. I am trying to make it as open as possible, your Honor.

The Court: Very well.

Q. (By Mr. Kenny): Mr. Ross, I think you said that there were about 40 or 50 boats from which you bought fresh fish. A. Yes, sir.

Q. And I think the court asked you that question, also, and you replied to that effect. Actually there are about 200 boats that bring fresh fish into San Pedro, small boats?

A. There might be more. I don't know the number, I am sorry to say.

Q. The number you buy from is 40 or 50?

A. That is what I would estimate.

Q. You have been in the fishing business since 1927; [445] would you be able to estimate from that experience that you have had that there are actually about 200 small boats that bring in fish?

(Testimony of Arthur Webster Ross.)

A. I would estimate that there might be more than that.

Q. And you said that you deal with the captain of the boat, or whatever member of the crew can speak English, when you are negotiating for the purchase of the fish. These 40 or 50 boats—about how many would you say have a crew of three? A. Are you limiting me to three?

Q. If you describe——

The Court: How many have a crew of three, if you know?

Q. (By Mr. Kenny): If you can tell us what the sizes of the crews are on the boat, just give us a general picture of it.

A. They run from small crews of three up to as high as 15, as high as 18.

Q. The smallest crew is about three?

A. Yes.

Q. And the highest is 15 to 18. When the fish are brought in, do you, your firm, for example, the American Fisheries, do you buy all of the catch from one boat, or when the boat comes in with a load is that catch, portions of it, bought by other dealers, including yourself? [446]

A. Should it be a small boat with a small catch, I may buy the whole lot.

Q. And if it is a large catch?

A. If it is a large lot I buy whatever I need.

Q. Do you have any discussion with the other—say, for example, one day there comes in a surplus of fish, more fish than you need, what becomes

(Testimony of Arthur Webster Ross.)

of that surplus, how is that handled? Is it destroyed or distributed on some pro rata basis between the various dealers? How is that done?

A. First, if the fish comes in, I buy what I think I need.

* * *

The Witness: I buy what I think I need. If I should sell it I buy still some more the next day. You then say if there is a surplus?

Q. (By Mr. Kenny): Yes.

A. If it is a surplus, as far as I am concerned, I don't buy it.

Q. Do you know what happens if the fish isn't bought? Is it thrown over the side?

A. That I wouldn't know.

Q. In 27 years you don't know—do you know of a single incident in the last 27 years as to what happened to surplus fish if you didn't buy it? [447]

A. The surplus fish is not surplus, as far as I am concerned. I buy what I need for my business, and I sell it. I am not interested—I am not selling the fish, I am buying the fish. I only buy my own needs.

Q. Maybe this will make it clearer to you. What if one day the fish that is brought in is less than what you need, less than what the other people need? A. I try to get as much as I can.

Q. There is no arrangement at all whereby everybody gets some kind of a fair share of the catch that is brought in? That is, by "everybody" I mean your merchants there on the wharfside.

(Testimony of Arthur Webster Ross.)

A. If the captain wishes it that way, yes. If a captain wants to take care of four or five markets, or all 10 markets, he will divide it. That is natural from his point of view, because when he does come in with a surplus he wants to get rid of the whole lot of this fish; therefore, if he pleases them when it is scarce, he wants to be taken care of when it is plentiful.

Q. These captains who want to make friends, how many of them would you say are there, percentagewise, of the 40 or 50 with which you deal that spread the short catch around?

A. I couldn't say as to that.

The Court: By the way, do you know of any surplus of fish? Has there been surplus from people from whom you buy? [448]

The Witness: Many a time there were more fish than I could buy.

The Court: More fish than the people on the market could buy?

The Witness: There is never a surplus of fish, because if there is a surplus of fish the price will go down to a point where it will find a demand.

The Court: So the fishermen sell their fish, is that what you are saying?

The Witness: Yes, sir, that is what I am trying to say.

Q. (By Mr. Kenny): Are you familiar with a trade term known as "seconds?"

A. Yes, sir.

(Testimony of Arthur Webster Ross.)

Q. And actually aren't those seconds fish that have spoiled or some of them spoiled because it was waiting a buyer too long?

A. I don't know about waiting a buyer. Second fish may come through spoilage in the packing and in the catching, and in the placing in the hold of the ship; or if the ship is delayed in coming home, or if the ship is delayed and is lacking ice and has not been properly taken care of.

The Court: Mr. Ross, let me ask you this question: The fishermen, the fishing fleet comes in and they sell all the fresh fish market will absorb that day?

The Witness: Correct. [449]

The Court: Then do they have any left?

The Witness: Yes, sir.

The Court: What do they do with it,—wait until the next day?

The Witness: Wait until the next day and offer it for sale again.

The Court: They keep it until it is gone?

The Witness: That's right.

The Court: Or do they take it over to the canneries and sell it?

The Witness: It all depends on the variety. Most varieties of fresh fish are eventually sold on the fresh fish market.

The Court: So the man who has a boat full of fish, he stays there until he sells the fish before he goes out again?

The Witness: That is correct.

(Testimony of Arthur Webster Ross.)

The Court: That is the general course of business?

The Witness: That is the general picture.

The Court: I see.

Mr. Kenny: While counsel is examining that, I will take up another subject.

The Court: I will ask him another question if I may on that, counsel.

Mr. Kenny: All right. [450]

The Court: These 40 or 50 boats that you buy fish from, do they generally have ice to ice the fish in the hold?

The Witness: About 50 per cent of them would have ice.

The Court: Is there any relationship between the size of the boat and the one that has ice?

The Witness: Yes, sir.

The Court: What is that?

The Witness: The small boat goes locally fishing in the morning or overnight and can come in in the early morning without ice; whereas the boat that goes out for days carries ice.

The Court: The small boat that has its fish there, does he keep the fish in the hold if he can't sell it that day?

The Witness: No, sir; he sells it that day, or he may re-ice it at the wharf.

The Court: Then there are places for him to re-ice his fish if he can't sell it?

The Witness: Yes.

The Court: And is that the custom?

(Testimony of Arthur Webster Ross.)

The Witness: That is the custom.

Q. (By Mr. Kenny): Mr. Ross, I will ask you if this has the signature of your secretary. Is that Mrs. Pitt?

The Court: Let's mark it for identification, so the [451] Circuit Court of Appeals will see something besides "this" in the record.

Mr. Kenny: I am sure my friends of the government do not expect to appeal.

Mr. Dixon: We will speak for the government, Mr. Kenny.

The Witness: This represents a purchase of fish by my company on March 17, 1947, covering 402 pounds of rock cod at 12 cents.

Q. (By Mr. Kenny): You might explain to the jury just what the process is——

The Court: What letter is that?

The Clerk: E.

Q. (By Mr. Kenny): ——when the fish is delivered to you, what do you do with the tag, if you give a copy to the fisherman, and so on. I am not familiar with it. It might make it clear to the jury to know just how that is done.

A. The captain, owner of this boat, the American No. 2, Mr. George Knowlton, whom I believe is a defendant——

Q. Yes, sir, this is Captain Knowlton right here.

A. (Continuing): ——he evidently sold this fish to my company on March 17, 1947, that is, of this year, and he came in and evidently negotiated for rock cod, a box of rock cod, maybe two boxes

(Testimony of Arthur Webster Ross.)

of rock cod, a boat box is 200, 250 pounds, he evidently sold 402 pounds of fish at 12 cents; we [452] gave him this original ticket as his receipt, a second copy we keep ourselves, a third copy is turned in to the Fish and Game Commission. Each one of these receipts is numbered.

Q. As a sample trip, Mr. Knowlton, or Captain Knowlton's boat comes in,—where would it tie up? Would it tie up at the wharf near your place—

A. Yes.

Q. Near your place of business?

A. That is correct.

Q. To make it clear to the jury, where are the other fish buyers' places of business?

Mr. Rubin: You might refer to Government's Exhibits 1 and 2, Mr. Kenny. They are pictures of that area.

Mr. Kenny: That might be helpful. I might imagine the jury has seen this.

Q. He would tie up a boat—

A. Alongside the wharf, which consists of a building approximately 500 feet long.

Q. And then how does the captain make it known to you that he has rock cod, a load of rock cod? How does he do that?

A. Sometimes we happen to be out on the wharf looking for boats to come in. I would recognize that particular boat as being a rock cod boat at this time of the year. If I needed rock cod, naturally, I would wait and talk to him, or [453] he will come along and talk to me.

(Testimony of Arthur Webster Ross.)

Q. Some times they come in and talk to you, and sometimes you——

A. I go out and talk to him. If I am anxious to buy fish, I am anxious to be the first man to the boat to buy from him.

Q. What about the other fish dealers?

A. That is their concern.

Q. What have you observed them doing?

A. If they are anxious for fish, they will be trying to get to the boat, too; if they are not anxious for fish, I presume they will go about their business if they don't want it. [454]

* * *

Q. (By Mr. Kenny): I will show you here four tags signed——

The Court: Are those marked as one exhibit for identification?

Mr. Kenny: I think so; yes. That will be F?

The Clerk: Defendants' F for identification.

(The documents referred to were marked Defendants' Exhibit F for identification.)

Mr. Kenny: They are signed by Independent Fish Company, Star Fisheries, Standard Fisheries Company, Ocean Fish Company, Zankich Brothers, Terminal Fisheries, and Pioneer Fisheries Company.

Q. I will ask you if those are not all fish merchants in the same position as you are on the pier.

A. They all are.

(Testimony of Arthur Webster Ross.)

Q. I will ask you if Exhibit E shows that the rock cod that you bought was at 12 cents a pound, that is, on last Monday, the day the trial started. Is that correct? A. Yes, sir.

Q. Now I will ask you to examine this and tell me what these fish dealers paid for rock cod on that same date.

A. They evidently paid 12 cents for rock cod.

Q. Each one of the fish dealers?

A. Yes, sir.

Q. Paid the same exact price of 12 cents? [456]

A. Yes, sir. That is what the tickets show.

Q. And does that happen very often, a coincidence of that kind, Mr. Ross?

A. It very frequently happens that a load of fish goes at the same price. Naturally the fishermen coming in and he gets 12 cents for the first box of fish he sells, he is not going to drop down his price unless he has to.

Q. How frequently would you say that their—would you say it is more frequent than infrequent that a uniform price, such as I have shown here, is paid on a given day for a given species of fish?

A. I would like to be sure that that was always the case because I would know what my competition was. I have no idea what other people pay for fish.

The Court: When you buy fish.

The Witness: When I buy fish. The only thing I can tell is what I pay for it. If you would like a similar case like this, for the same captain within

(Testimony of Arthur Webster Ross.)

the last month, this same captain sold me fish on one day which nobody else would buy, and I paid him 12 cents, and I believe at the second or third day thereafter he sold me out of the same load fish at 8 cents of his own accord.

Q. (By Mr. Kenny): The fish was a day older then, wasn't it?

A. That would make no difference. [457]

Q. Tell me, Mr. Ross, how often, where a fish buyer pays, say, 12 cents, how often do you recall where a second fish buyer pays a higher price than 12 cents?

A. When the supply is less than the demand there will then be a bidding up of the price.

* * *

Q. How many meetings of the Western Seafood Institute did you attend, Mr. Ross?

A. Two or three as an institute, and perhaps four or five with the officers of the OPA.

* * *

The Witness: From the inauguration of the OPA up to the time that the OPA was suspended on May 20, 1946, so that would be approximately over three years.

Q. (By Mr. Kenny): At those meetings did you or any other fishermen [459] discuss——

Mr. Rubin: Dealers do you mean?

Q. (By Mr. Kenny): ——fish dealers discuss the price paid for fish to the fishermen delivering to your wharf there?

A. Only in the presence of the OPA.

(Testimony of Arthur Webster Ross.)

Q. Have you ever had, say in this last year, is it your testimony——

A. May I say this, that not all of the dealers in San Pedro were members of the Western Seafood Institute.

Q. I see. Is it your testimony that in the past year you and your colleagues, the other fish merchants on that wharf, have never talked with any one of your colleagues about the price you paid for fish that day on the wharf?

A. Only where I think that the price of fish is getting excessively high. That would be the only time. I might make a remark——

Q. I am satisfied with that answer.

Mr. Rubin: Let him finish.

The Court: He can explain his answer.

The Witness: I might make the remark that if there is an oversupply of fish, and if it is not moving, would it not be better to buy that fish or induce the captain and tell him the circumstances on the outside, which he doesn't see, to lower the price, if possible, otherwise we won't be able [460] to move it. We are the ones who move it. The fishermen can't. We are only what you would call the entrepreneurs, if you would call it that way, the in-betweens.

Q. (By Mr. Kenny): You are the entrepreneurs?
A. That is right.

Q. Now tell me if the fish is not moved that isn't your loss, that is the captain's loss, isn't it?

A. When I buy fish and find there is an oversupply and if the captain sells fish later for a lesser

(Testimony of Arthur Webster Ross.)

price, the balance of his load, the fish that I bought originally drops that price and it is out of my pocket, the difference in price. [461]

Q. I recognize that the price of fish, a drop in the price of fish would affect your pocket, certainly, but what I am asking is, if fish is not taken from the boats, if it spoils, this surplus occurs, you don't bear the loss, the fisherman bears the loss, isn't that right?

Mr. Rubin: That is objected to as assuming facts not in evidence.

The Court: Sustained.

* * *

Q. (By Mr. Kenny): What happens, in your 27 years' experience do you know what happens, to fish that is caught when it is not bought by you or the other fish dealers? A. No, sir.

Q. You don't know? A. No.

Mr. Rubin: That is objected to as asked and answered.

Mr. Kenny: The witness doesn't know. I will drop that line of questioning.

Q. Now, Mr. Ross, you testified that you don't own a boat, you don't have any interest in one.

A. None whatsoever.

Q. You don't have any mortgage on a boat?

A. No, sir. [462]

Q. And you don't own a boat?

A. No, sir.

The Court: Do you own any nets?

The Witness: No, sir.

* * *

(Testimony of Arthur Webster Ross.)

Q. (By Mr. Kenny): You do know that the Standard Fish Company has an interest in boats, don't you? A. I don't.

Q. Do you know that the Pioneer Fish Company has interests in boats? [463] A. I don't.

Q. Or the State Fish Company?

A. I know not.

Q. Or the Los Angeles Fish and Oyster Company? A. No, sir.

Q. You know of no fish dealer on the San Pedro wharf who has any interest in the fishermen's boats?

A. Not to my knowledge.

Q. Did you ever know of an instance in the past where that practice existed?

Mr. Rubin: That is objected to, if your Honor please, as being ambiguous and too remote, and beyond the scope of the direct examination.

Mr. Kenny: What I am trying to find out is if they never owned an interest in the boat, or if they just recently stopped just like they stopped——

Mr. Rubin: Just a moment.

The Court: I think this is outside the scope of the direct examination. I think even the last few questions were perhaps a little outside of it, what he knows about the others. He says he doesn't know. The objection is sustained.

Mr. Kenny: May I make just one point, that this witness was offered as a man who had spent 27 years on that wharf. [464]

The Court: All right. I do not suppose he goes around looking at other people's business on matters of what they own or what they do not own. If it

(Testimony of Arthur Webster Ross.)

is a matter of notoriety why he might know it or he might not, I don't know.

Mr. Kenny: Isn't his lack of curiosity something that goes to his credibility?

Mr. Rubin: We will submit to the court's ruling without any objection.

The Court: That is a difficult question to decide. On the matter of a man's curiosity, I don't think that that has anything to do with the veribility of his testimony.

Mr. Kenny: I think your Honor does not want me to go further into it?

The Court: The objection to the last question is sustained.

Mr. Kenny: All right.

Q. You know of no case where any preference has been given by a wharfside dealer to any boat captain because of any interest that the boat captain might have in the boat, or put it the other way, you know of no case where, because of an interest the wharfside dealer has in a boat, that the captain gives him first preference on the fish that he brings in?

A. I don't know of any case. Are you stating that as a question or as a fact? [465]

Q. I can only ask you what you know.

A. You say to me, you know.

Q. Do you know? A. I do not.

Mr. Kenny: I would like to have Exhibit 6, your Honor please.

(The document referred to was passed to counsel.)

(Testimony of Arthur Webster Ross.)

Q. (By Mr. Kenny): I want to ask you some questions on the fish that you handle. Apparently your total from Exhibit 6, the total amount of fish that came in by boat and landed at the wharf, was 392,158 pounds during this period of time.

A. That is right.

Q. During that same period by truck, 358,810 pounds came in, is that correct, from places within California, and 56,000 pounds came from outside of California? In other words, more fish came in to you by truck than came in to you from these fishermen who have the boats?

A. That is correct. The figures show that. That is correct.

Q. And the value of the fish landed at the wharf is \$43,000, and the purchases that came in by truck or Railway Express were \$78,000 within California and \$12,000 from out of California, or \$90,000. In other words, more than twice in value? [466]

A. Yes.

Q. Of the \$43,000 you paid out to these fishermen, you paid out \$90,000 outside of California?

A. Yes.

Q. Now, you have stated that the fish that you buy from the wharf dealers go 90 per cent to what you refer to as the Oriental trade.

A. That is my particular business.

Q. However, you do know that that particular trade is also supplied by fish dealers from San Francisco and elsewhere, isn't that right?

A. Yes, sir.

(Testimony of Arthur Webster Ross.)

Q. And the Sacramento fishermen and elsewhere? A. Yes.

Q. Now, I notice your sales of fish during these two-year periods total—I won't bother doing the mathematics at this time. Do you know what an uptown fish dealer would be called?

A. You mean a Los Angeles fish dealer?

Q. A Los Angeles uptown fish dealer.

A. All right.

Q. Those would be persons who are fish wholesalers such as you are. Would you say that there are approximately about 14 such wholesalers in the uptown area here in Los Angeles? [467]

* * *

The Court: Do you know how many there are?

The Witness: I don't know how many there are, but I would say there might be anywhere from 8 to 14, if that would satisfy you.

Q. (By Mr. Kenny): Would you say that generally that their purchases [468] are of fresh fish caught in what we call the Southern California area to the fish that is brought in by truck from other parts of the state and other states and foreign countries, is relatively the same as your proportion?

A. I would say the proportion brought in from outside points compares to what local fish, as we call it, would be far greater in Los Angeles.

Q. In other words, you roughly, by poundage, it looks like about 51 per cent fish brought in by truck and 49 per cent by boat, and about two to one in value of the catch, but you would say that

(Testimony of Arthur Webster Ross.)

that proportion is even greater, there is an even larger amount? A. I should think so.

Q. Uptown here? A. I should think so.

The Court: You mean you are guessing?

The Witness: I am only guessing. I don't know because I don't work up here.

The Court: If you don't know, say you don't know; don't guess.

The Witness: I don't know.

The Court: The jury is instructed to disregard his previous answer on the ground that it is just a guess.

Q. (By Mr. Kenny): Now the gentlemen at the counsel table have totaled [469] up your total purchases and total sales and it shows on Exhibit 6 that you paid \$134,581 for fish during that period, and sold during that period \$167,044. Now deducting one from the other that would show a gross profit to you of \$33,000.

Mr. Rubin: Just a moment. May I see those figures?

(Exhibiting figures to counsel.)

Q. (By Mr. Kenny): I am asking you, Mr. Ross, is that your total gross; in other words, is that your total gross profit in the fish business during that 13-month period?

Mr. Rubin: Just a moment. The question is objected to, if your Honor please, as being completely immaterial to the issues of this case. It doesn't make any difference whether he made X gross profit or he lost X gross profit, in so far as

(Testimony of Arthur Webster Ross.)

this charge in this indictment is concerned that is brought on by the United States government charging these defendants with a violation of the Sherman Act. We submit that it doesn't tend to prove or disprove any issue in this case.

Mr. Garrett: If your Honor please, it goes to the veracity of these figures.

Mr. Rubin: There is nothing in the question that tests the veracity of the particular parts except the possibility the addition.

Mr. Kenny: We certainly have a right to test the veracity [470] of this witness.

Mr. Rubin: The document is in evidence.

Mr. Kenny: And so you have put it in.

The Court: If that is the purpose of the question, the objection is sustained. [471]

* * *

Q. (By Mr. Kenny): Mr. Ross, you said earlier this afternoon that you suffered a loss, for example, if you paid 12 cents a pound for fish and other fish dealers paid 8 cents a pound, that that depreciated the value of your inventory of fish to the extent of 4 cents; that is essentially what you said this afternoon, is that right? A. Yes, sir.

Q. Tell me how do you ever find out that they have paid 8 cents?

A. From our customers to whom we individually sell and collectively sell.

Q. But you never go around to them, to the merchants themselves, and find out what they are paying? A. Positively not.

(Testimony of Arthur Webster Ross.)

Q. When is it brought to your attention that somebody has cut the market on you?

A. Because when I telephone to one of my customers, he says that so-and-so is selling for such-and-such a price. [472] If I am selling at 12——

Q. I am talking about buying prices, not your selling prices.

A. I go up to the captain or owner as he approaches each market and finds out what he can get for his fish.

Q. I understood you to say if somebody else bought for 8 cents and you already bought for 12 cents, you would be in trouble, you would sell for a loss to the extent of your fish in inventory?

A. I said if I bought for 12 cents one day, and the next day the captain of the boat reduced the price on the balance of his load to 8 cents, I would suffer a loss on the competitive market on the fish that I bought for 12 cents that I had left over.

Q. Let me ask you this question: do any of the other fish dealers on the market come to see you and see what you are paying for fish?

A. No, sir.

Q. All right. I was asking you about Exhibit 6——

The Court: Let me ask you a question in that respect. When a fellow comes to sell you some fish, does he tell you what the other people are paying for fish?

The Witness: Very frequently.

Q. (By Mr. Kenny): And you take his word for it? A. Within limits. [473]

(Testimony of Arthur Webster Ross.)

Q. And you never check with any other dealers to see whether he is telling you the truth?

A. No, sir.

Mr. Kenny: Now, your Honor, I want to get back to this document 6; I want to test the accuracy of that, if I may.

Q. This reflects that you paid out for fish during this period one hundred thirty-four thousand, round, dollars and received on sales of fish one hundred sixty-seven thousand dollars during that period. Do you want to explain that in any way to this court or jury, the fact—the difference between what you paid for fish and what you received for it during that year is thirty-three thousand dollars, and no more or less?

A. The difference is what, you say?

Q. Yes. [474]

* * *

A. Those figures I have given you reflect my books from the sales and purchases. There was \$33,000, evidently, from those figures, of a gross profit, between those figures. But from my point of view—if you know books at all, perhaps you being a lawyer you don't——

Q. No, I don't.

A. Then you would have to start with your starting inventory and your closing inventory to arrive at your annual gross profit.

Q. Maybe you can help me this way. I notice that you purchased during that period of time 807,000 pounds of fish, and sold 743,000 pounds of fish. Can you tell me—well, we will say——

(Testimony of Arthur Webster Ross.)

The Court: What do you want to know?

Mr. Kenny: I want to know what became of that other 60,000 pounds of fish. Have you got that much on storage?

The Witness: It might be on storage. It also may be the loss in processing the fish from the state we received it [475] from the fishermen to the time we sell it.

The Court: It might be entrails, heads and tails?

The Witness: Yes, entrails and heads and tails, and the other bones in fish if it were fileted.

Q. (By Mr. Kenny): Do you process any of this fish that is brought in to you by truck?

A. I have already so stated.

Q. You do process it? A. Yes.

* * *

Q. (By Mr. Kenny): I will put it this way: how many people are on your payroll?

A. At the present day?

Q. During this period.

A. During the strike, or——

Q. No. During this thirteen-month period that is reflected.

A. With the exception of the strike month, six permanent employees.

Q. Then you have additional emergency help as well? [476] A. If it is necessary.

Q. Do you pay rent?

Mr. Rubin: If your Honor please, that is objected to as being immaterial, and certainly without——

(Testimony of Arthur Webster Ross.)

The Court: Objection sustained.

Mr. Kenny: I am trying——

The Court: Ask the next question, counsel. Let's get on.

Q. (By Mr. Kenny): Tell me, Mr. Ross, do you want to make any further explanation of this figure of \$33,000 margin between what you paid for the fish and what you sold it for?

Mr. Rubin: The form of that question is objected to; if your Honor please.

The Court: Objection sustained.

Mr. Kenny: I will drop the question, your Honor.

Q. (By Mr. Kenny): During the month of June in Southern California, customarily, would you say that the five leading species of fresh fish brought in in Southern California are barracuda, swordfish, California halibut, yellow-tail, and pompano? A. No, sir.

Q. Could you tell us what the leading species are during the month of June that come in?

A. I am sorry I can't answer that, because Mother Nature takes care of that. Customarily——

The Court: You mean it varies?

The Witness: It varies.

The Court: From year to year?

The Witness: From year to year. And all depending on what the fishermen are catching; what they want to go for.

The Court: What they want to go for?

The Witness: What they want to go for?

(Testimony of Arthur Webster Ross.)

The Court: And what is running?

The Witness: That's right.

Q. (By Mr. Kenny): I want to ask you, Mr. Ross, if you do not know it as a fact that June of 1946 was the third highest June in eleven years, over an eleven-year period, in the catch of fresh fish brought in in this Southern California area described by the District Attorney?

A. I do not know that.

Q. During June of this year, this last June, do you not know it as a fact that there was an exceedingly heavy run of albacore during June?

A. I do not know. [478]

Q. Do you not know as a fact that the fishermen dropped their fresh fishing, their fishing for the fresh market, and went out to fish albacore during the month of June, 1946?

A. I do not know that.

* * *

The Court: Albacore is usually caught not for the fresh fish market when it is caught?

The Witness: It is generally caught for the canneries. During the month of June we were closed.

Q. (By Mr. Kenny): If there is a heavy run of albacore the fishermen prefer to fish for that rather than for the fresh fish market, isn't that right?

A. I couldn't say as to that. That would be the fisherman's preference.

(Testimony of Arthur Webster Ross.)

Q. Haven't you observed that they prefer to fish for albacore when they can get albacore as against the fresh fish market. That hasn't come to your attention?

A. If they can catch albacore they will go fishing for albacore because it is the highest priced fish. [479]

Q. That is right. And if there was a heavy run of albacore they wouldn't be fishing for your market at all, isn't that right?

Mr. Rubin: Just a moment, if your Honor please. That is objected to as speculative.

The Court: Sustained.

Q. (By Mr. Kenny): Mr. Ross, did you bring the citation or whatever it was from the Federal Trade Commission with you today?

A. I did not. I could not find it among my records, and since coming here today I phoned to the lawyer of the Exchange at that period, Mr. Clifton Hix, and have asked him to look in his records and see if he has the copy, and if so to forward it to the Department of Justice attorneys. I talked to Mr. Walter Binns who is associated with Mr. Hix at the lunch hour and he is looking for it right now.

Q. Did you bring your books with you, Mr. Ross?

A. Yes, sir.

Mr. Kenny: Your Honor, I think Mr. Garrett wanted an opportunity to look at those books.

The Court: Is Miss Pitt here?

The Witness: No, sir.

(Testimony of Arthur Webster Ross.)

The Court: Where are the books? Who has them?

Mr. Rubin: We brought them upstairs during the noon period. [480]

The Court: Do you want to examine them now or do you want to go over them before you examine the witness concerning the books?

Mr. Kenny: I think it would be much more interesting for the jury if we examined after we had read them, seen what was in the books and see what the purpose is, see what we had to examine on.

The Court: It is not a question of what is interesting for the jury, it is a question of what is material and admissible.

Mr. Kenny: I agree with your Honor.

As I say, I have no further questions except that might occur after an opportunity to inspect Mr. Ross' books.

The Court: All right. The books are upstairs in your office?

Mr. Rubin: Yes. They can be here inside of two minutes, if your Honor please.

The Court: I do not want to recess the court and take the time of the jury while they are here to examine books. I think that can be done after the recess tonight and before court reconvenes tomorrow morning. If you have no further questions of this witness, he may be excused until 10:00 o'clock.

Mr. Margolis: We would like to ask the witness to remain so he can help us identify the books, your Honor. [481]

(Testimony of Arthur Webster Ross.)

The Court: All right. What time do you want to go over them, 4:30?

Mr. Margolis: It will take some little time to do undoubtedly. It might be well to proceed right now.

The Court: The jury is here. Let us get on with some more testimony. I do not want to burden the lawyers too hard, but you will have to work between sessions here. [482]

* * *

The Court: Who do you wish to designate to go over this man's books with him?

Mr. Margolis: There will probably be two or three of the attorneys here.

The Court: Two or three attorneys?

Mr. Margolis: I think, your Honor, one of the reasons that we asked that we do it now is because I have some idea of the kind of a job this is going to be. It isn't something we can do in an hour or two. I think it is going to take quite a while to check these matters and to do so with any sort of satisfaction. We are approaching books with which we are not familiar and we want to check certain matters, [483] and it is going to take some little time.

The Court: Certainly among the vast number of lawyers there are here, seven or eight or nine representing the defendants, they can divide the work among themselves so that one lawyer, or whoever they wish, can be examining those books while we get on with this trial. I am not going to defer

(Testimony of Arthur Webster Ross.)

the trial and dismiss the jury just for people to inspect books. If you want to start your inspection at 4:30 today—where are the books? In what room?

Mr. Rubin: Room 1602 of the Federal Building.

The Court: You go to Room 1602 Federal Building after the recess and you can remain there a reasonable length of time, and if you can be there tomorrow morning, say at 9:00 o'clock—can you do that?

The Witness: I live 25 miles from the City Hall. A reasonable length of time this evening after 4:30 o'clock tonight would be all right. I don't belong to any union but—

Mr. Rubin: Mr. Ross, if that is convenient for the court and counsel, can you arrange to be here as soon after 9:00 o'clock as you can?

The Witness: I can be here in the morning, provided I get home tonight.

The Court: Say one hour tonight?

The Witness: One hour I think would be enough to satisfy [484] all of the lawyers, all eight.

The Court: All right. If you are up there at 4:30, from 4:30 until 5:30 tonight, and then if you are not, if you can get here as reasonably near 9:00 o'clock in the morning as you can, that will be all right.

Step down. Call your next witness.

(Witness excused.)

The Court: The further cross-examination and redirect examination of this witness will be de-

ferred until such time as counsel examine him concerning the books, if they desire any further examination.

Have you somebody now who can go up and be going over those books with the witness?

Mr. Dixon: Yes, your Honor. We will provide someone to be present when the examination is made.

The Court: Mr. Fuss, can he be excused to go up and go over the books now with the witness?

Mr. Margolis: Yes.

The Court: Go on upstairs now to Room 1602.

Mr. Kenny: We would like to take up Exhibit 6, if the court will permit that.

The Court: Will you be needing that with the next witness?

Mr. Dixon: No, I don't think so, your Honor. There is [485] no objection.

The Court: All right. You may take it up.

Are those the books?

Mr. Rubin: Yes.

The Court: They are going upstairs to Room 1602 now with Mr. Ross and Mr. Fuss—and I don't know your name.

Mr. Rubin: Mr. Alexander.

Mr. Kenny: Your Honor, it occurs to me that I did not offer in evidence the fish tags, that is, E and F, and I do so at this time.

The Court: Admitted.

(The documents referred to were received in evidence and marked Defendants' Exhibits E and F.) [486]

VINCENT VITALICH

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Vincent Vitalich.

The Clerk: Your address, Mr. Vitalich.

The Witness: 1348 Sepulveda Street, San Pedro.

Direct Examination

By Mr. Schwartz:

Q. Mr. Vitalich, what is your business or occupation? A. Wholesale fish dealer.

Q. And how long have you been in the wholesale fish business?

A. At the present address, Municipal Fish Wharf, San Pedro, California, for thirteen years.

Q. Where prior to that?

A. In retail fish business in Tulare, California, in 1925 for a period of two years.

Q. Since 1925 you have been in the fish business, either retail or wholesale, continually, is that correct?

A. Yes, sir; I have been in Los Angeles in the brokerage business.

Q. Brokerage of fish?

A. Fish brokerage.

Q. Your present place of business, you say, is at the [487] Municipal Fish Pier in San Pedro?

A. Yes, sir.

(Testimony of Vincent Vitalich.)

Q. Will you relate to the jury just how you conduct your business as it relates to the purchase of fish on the seaward side?

* * *

The Court: Has it changed any, the course of doing business, your method of doing business?

The Witness: No, sir.

The Court: All right. Objection is overruled; and the running objection, same ruling.

The Witness: Do you mean how do we buy the fish?

Mr. Schwartz: Yes, from the fishermen.

The Witness: First thing in the morning we come down usually 7:00 o'clock, a little earlier, maybe a little later, and we go out on the wharf.

* * *

A. (Continuing): Then we go out on the wharf and look around the boat, see if there is any fish, we ask the captains of the boats, if there happen to be any, what fish they have, what kind of fish they have, and the amount of the fish they have; and they tell us what they got.

First thing they ask what is the price of the fish. I will tell them, maybe, 15 cents, 20 cents, whatever happens to be market price to my estimation. Well, if he is satisfied, if he has a small amount of fish, he might sell it to me. But if he has a large amount of fish he might not be satisfied and he goes down on the wharf, or maybe two or three buyers sometimes is present asking for some fish.

Q. (By Mr. Schwartz): Two or three buyers of what?

(Testimony of Vincent Vitalich.)

A. Two or three buyers present will be right by the same time I am there asking the captain same thing as I am asking him, and if he is not satisfied with what I offer him, he will go down the line and probably try to get more. [489] Sometimes they come back and sell me the fish; other times they don't come back, and first thing I know he goes out to some other market and pulls out the box and sells him the fish.

I ask him, "What is the matter you didn't sell me the fish?"

"Well, So-and-So paid me one cent more per pound," or "two cents more per pound."

Well, then I wait for the next boat to come in. I do likewise and go to him and ask him if he would sell me the fish, whatever he happens to have, if I need it that particular kind of fish. Well, sometimes some boats prefer to sell me fish than any other market; then other boats prefer to sell the fish to some other market; and other times I don't even have to go out on the wharf,—the fishermen will come to me, "Vinc, you want any fish?"

"What have you got?"

"We got halibut."

"All right. Bring me a box."

He comes in.

"How much fish do you have?"

"Oh, 350 pounds," for instance.

I say, "What is the price?"

Well, he tells me his own price. How he arrived at that he probably asked some other fishermen how

much he sold [490] the fish, and he expects to get the same price as the other fellow.

On the large boats, when they come from Mexico, usually, they carry in 20 tons of fish, 25 or 30 sometimes, and customarily the man will come by the wharf and he will get up on the dock and say—come to me, or somebody else, whoever happens to be around—if fish is scarce we all look out for the fish to see who is going to get it first—then he will ask me or somebody else, whoever happens to be there, “What is the price of barracuda?” Well, a fellow will say, “How many you got?”

“Oh, got 20 tons.”

If he would ask me that, I go right back to the office and call some of my customers, the large customers that I sell fish to, and see if I could sell them, see if there is any fish anywheres else, like San Diego, or Santa Monica, Newport Beach; these people that I contact, they will tell me the truth, as a rule, what they can be some place else, or there isn't any fish. Then I go back outside and tell the man, well, I would like to get a couple of ton of your fish at a certain price, whatever I happen to think will be right. Naturally, he goes down the line and asks somebody else what they will offer him for the fish, and customarily before he gets through he automatically gives the fish to every market. Maybe someone offers him 20 cents, the other offers him 19, [491] the other maybe 21. But usually the market that offers him 21 cents or 2 cents more than the other, means they will buy a box or two, maybe three, which is about a thousand pounds. And then

(Testimony of Vincent Vitalich.)

they come to the conclusion that instead of selling five tons at 22 cents, the fishermen will say, "Let's cut it down to 20 cents," themselves, they talk among themselves on the boat, then they say, "Let's cut it down to 20 cents, we may be able to sell a whole load." They customarily do that. Then they give it to each market. One market wants two tons, they give him two ton; if fish is scarce everybody wants to get as many as they can, and customarily they sell a whole load at 20 cents or 18 cents to all these different markets. In other words, they keep us down there as a customer, all the fishermen practically they figure we are their customers. They come in and they know they are going to sell the fish to us next time when they come in. When fish is scarce, again they give us, each one of us, a little fish. If it is three ton, they try to divide to everybody one box to keep everybody satisfied, so when fish is plentiful, in return, we will buy fish from them.

The Court: Let me ask a question. Are most of your sales made by the telephone?

The Witness: Yes, telephone and telegrams.

The Court: Most of your sales are to regular customers, is that right? [492]

The Witness: Yes, sir.

The Court: And made by phone and telegram?

The Witness: Yes, sir.

The Court: Is that true of the dealers up and down the wharf, or do you have salesmen out?

(Testimony of Vincent Vitalich.)

The Witness: Well, salesmen in San Francisco, my own firm, and the others, there is a couple of companies down there that they don't ship much fish outside, they truck it in Los Angeles, distribute it to the butchers, fish markets——

The Court: As a general rule are the fish mostly sold by phone?

The Witness: Majority to us, sold by telephone and telegram.

The Court: From day to day?

The Witness: Yes, sir.

Q. (By Mr. Schwartz): Mr. Vitalich, from what you say, I gather there are times when there are several dealers on the pier all bidding for fish, so that to that extent those dealers that are there know what the price is as to a particular catch of fish, is that correct? A. That's right.

Mr. Margolis: I object to that——

Mr. Schwartz: I am leading up to——

Mr. Margolis: I move to strike the answer for the purpose of making an objection. I object to the question as [493] leading and suggestive, and stating facts not in evidence.

Mr. Schwartz: Your Honor, what I am trying to do here is recount so that I can get to another question.

The Court: The objection is overruled. It is obviously a preliminary question to another question.

Q. (By Mr. Schwartz): And then there is another method by which you dealers can learn what

(Testimony of Vincent Vitalich.)

the price up and down the line is when you say the fishermen will come in and say, "Well, So-and-So down the line has offered me 20, and you only offer me 18," is that correct?

A. That's right.

Mr. Margolis: Just a moment. I object to that as leading and suggestive.

Mr. Schwartz: It has been testified to.

Mr. Margolis: If it has been testified to, then I object to it on the ground that it has been asked and answered. If it hasn't been testified to, which I think not——

The Court: Is this preliminary?

Mr. Schwartz: Yes, sir.

Mr. Margolis: It is preliminary, but it goes to one of the very issues. If counsel can stand up here and say, "It is preliminary," and then simply testify for the witness, why have the witness on the stand? Let counsel be sworn.

Mr. Garrett: I have my standing objection, if your Honor please, incompetent, irrelevant and immaterial. I would like [494] to point out, if your Honor please, that this testimony could be relevant only in the nature of rebuttal. I would like to ask what part of the government's case in the main such testimony could possibly go to?

The Court: This testimony would appear to me to be material in showing the course of the fish business, and whether or not the fish business is restrained, or the alleged conspiracy had a tendency or purpose to restrain the interstate business of fish.

(Testimony of Vincent Vitalich.)

The question of counsel was not improper, but reviewed things that came out before, and obviously was preliminary, and the objection is overruled.

Mr. Margolis: I just want to state this one thing, your Honor: When we went into the question——

The Court: Counsel, if you will just state the objection instead of arguing them. I would like to have everybody adhere to that rule, if possible. If you have any further objection, just state the ground of it without any argument.

Mr. Margolis: Yes, I want to object to this; that on the theory of the government's case, shown by its objecting to our questions when we tried to show there was price fixing among the dealers, this is incompetent, irrelevant and immaterial.

The Court: Counsel, you are not stating your objection; [495] you are arguing your point.

The jury will disregard the statement just made by counsel.

Mr. Margolis: I don't know how I can point out my objection without stating——

The Court: There are certain grounds of objection, and you know what they are. It is either leading, suggestive, incompetent, irrelevant or immaterial, stating a fact not in evidence, and so forth. If you state them I will rule on them, if you have anything additional.

Mr. Margolis: The point I want to make is this: We thought originally that this whole subject was not incompetent, irrelevant and immaterial——

(Testimony of Vincent Vitalich.)

The Court: Counsel, again I must caution you not to make an argument.

Mr. Margolis: I will ask leave, then, your Honor——

The Court: If you will state your objection I will rule on it. Do you have any additional grounds of objection other than that already stated?

Mr. Margolis: I have stated it, but I want to ask leave to argue it either in the presence or absence of the jury, or approaching the bench.

The Court: If you approach the bench it has to be in the presence of the defendants. I have sufficient information to rule on it. [496]

If you do not have any further grounds of objection, the objection is overruled. The reporter will read the question.

* * *

Q. (By Mr. Schwartz): Other than those two methods by which any one dealer can determine what the other dealer or dealers are offering for a given amount of fish, is there any [497] other way that you have of determining what anybody up and down the line is offering for fish that day for the same species or other species?

A. The way I can learn what the other fellow pays, as I said before, we all stay there, two or three of us——

* * *

Q. (By Mr. Schwartz): Go ahead.

A. Two or three happen to be there by the boat and naturally if I offer the price to the fishermen

(Testimony of Vincent Vitalich.)

at 20 cents the other buyers know it already. He was there present when I told him I will take two ton of fish at 20 cents a pound. Or the other way we could find out what the other fellow pays, a fisherman will say, go down the line and he will come back to me and say that so-and-so offered me 18 cents and you offered me 17 cents. I will say, "Maybe he is going to take from you a box or two of fish and maybe that is why he gives you more money."

"No," he says, "the other fellow offers me 18 cents and I want 18 cents for my fish too. If you want it, all right. If you don't want any, I will sell it to somebody else." That would be the answer ordinarily.

Q. Now do any of these fishermen from whom you purchase fish work for you as employees?

A. No, sir.

Q. Do you have any interest in any vessels?

A. No, sir.

Q. As an employer?

A. No, sir. I did have one.

Q. How long ago?

A. About three years ago. I had one boat with a [499] fisherman. He sold it to me and I sold it to somebody else.

The Court: These fishermen, do they fish with nets?

The Witness: Some of them.

The Court: Do you own any nets?

The Witness: No, sir.

(Testimony of Vincent Vitalich.)

Q. (By Mr. Schwartz): Do you pay these fishermen wages? A. No, sir.

Q. Now these transactions that you describe with the fishermen, are those the types of negotiations that result in a sale of fish? Is that the way you conduct your purchase of fish from fishermen?

A. Yes, sir.

Q. Now I want to go on to your purchases of fish from outside of the state of California. Will you describe that operation?

A. Well, we have brokers in San Pedro, which is Angelo Munsante, and the Seafood Brokerage Company, and we have several brokers in Los Angeles.

When Seafood Brokersage or Angelo Munsante brings in any fish in from Mexico, what they call bass, or totauwa, or shrimps, or any other fish, they will bring it in by truck, which would be a load of 5 ton, 8, 10 to 12 ton, sometimes small loads of 2 or 3 tons. He will bring it down to the wharf and he will say, we all walk up to this truck, practically [500] all of us to get some fish, fish is scarce particularly, and someone will ask Mr. Munsante, "How much is the price of your sea bass?"

He will say, "Twenty cents."

"Can I get some?"

"Sure."

The other fellow will ask him, "Can I get some?"

"Sure."

(Testimony of Vincent Vitalich.)

And by the time he gets through unloading the fish he will give each one of us, maybe 300 or 400 pounds of fish. The ones that buy the most when fish is plentiful he probably will give them a little more as a better customer.

Likewise the Seafood Brokerage do the same thing. If a load of shrimps comes in which would consist of two or three ton, four ton, I would say, "Mr. Munsante, have you got any shrimps? I would like to get a couple of ton to get in storage for freezing."

Q. Where does the shrimp come from?

A. Mexico, on the truck.

And probably he will say, "Well, I got a couple of ton for you today and if you want some more I might give you another load within two or three days," which we usually deliver to the Union Ice and Cold Storage in Wilmington, and we freeze it, that is, the Union Ice and Cold Storage Company freezes it for us. Naturally we pay them for it.

The Court: When you say "us" whom do you mean?

The Witness: Our company. I don't want anybody to misunderstand me when I said "us." I mean our company.

Q. (By Mr. Schwartz): The Catalina Fish Company?

A. The Catalina Fish Company.

The Court: Is that the name of your company, Catalina Fish Company?

The Witness: Yes, sir.

(Testimony of Vincent Vitalich.)

Q. (By Mr. Schwartz): Do you buy any fish from the state of Washington?

A. Very little.

Q. From what ports or what places?

A. Seattle.

Q. Any from Oregon?

A. Very little up there. My business is mostly conducted from local fishermen.

Q. Do you ship out of the state of California any of the fish which you purchase?

A. Yes, sir.

Q. To what states do you ship that fish or sell it?

A. I ship to Oregon, Washington, Idaho, Utah, Colorado, a few times we ship in Wyoming.

Q. How is the handling of the transportation of that fish taken care of? How is it shipped, in other words? [502]

A. It is shipped by the Railway Express Company. Their trucks come down, back up against the wharf and put it on the truck and they transfer it to the P. E. car at San Pedro, and sometimes they bring great big trucks, those semi trucks and pick it up at the wharf and they bring it right to Los Angeles.

Q. Is the fish which you ship out of the state in that manner generally fileted or is it in the same form in which you purchase it? A. No.

Q. Is it processed at all?

A. We clean it, cut the heads off and take the insides out.

Q. And it is iced?

A. And it is iced, naturally.

(Testimony of Vincent Vitalich.)

The Court: Is it iced or frozen?

The Witness: Iced, most of the time. Shrimps is the only fish that our company freeze and occasionally we freeze some sea bass or small sardines which is used for bait. We ship to the northern part of California. I presume it is for striped bass bait which they fish in the river.

The Court: Sacramento River?

The Witness: I presume it is. We ship a lot of bait to Sacramento, Stockton, Oakland, San Francisco. [503]

Q. (By Mr. Schwartz): By the way, does your plant have capacity for storage of fish?

A. Yes.

Q. About how much is that?

A. I got an icebox there, I could store about 15 original ton of fish, somewhere around there.

Q. Approximately how much, in terms of dollars, would the purchases of fish of your company amount to in any one normal year, say 1944?

Mr. Margolis: Objected to on the ground that it is not the best evidence.

Mr. Schwartz: I submit, your Honor—

The Court: Objection overruled.

Mr. Garrett: May I have the witness on voir dire?

The Court: No.

Mr. Garrett: If your Honor please, I think it is material at this point to bring out the fact, if it is a fact, that the Catalina Fish Company has books.

(Testimony of Vincent Vitalich.)

The Court: If he knows.

Mr. Garrett: We certainly have to have the best evidence as a basis for cross-examination, and if there are books that is the best evidence:

The Court: If he knows. The objection is overruled.

Mr. Garrett: I want my objection in the record at this [504] point. I didn't have a chance to get the objection in. It is objected to as not the best evidence on behalf of my defendant, and hearsay.

* * *

Mr. Garrett: And no foundation laid and calling for a conclusion of the witness.

The Court: Objection overruled.

* * *

Mr. Margolis: Just a moment. I want to make one additional objection, that it assumes facts not in evidence, that 1944 is a normal year.

Mr. Schwartz: Strike out the word "normal." 1944.

Mr. Margolis: Then I object to it on the ground it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Garrett: I wish to make the same objections to the question as stated.

The Court: Objection overruled.

Q. (By Mr. Schwartz): Answer the question.

A. Well, I couldn't say exactly but I would say the [505] purchases will be in the neighborhood of \$150,000.

(Testimony of Vincent Vitalich.)

Q. What would you say the amount for 1945 was?

Mr. Margolis: Same objection.

The Court: Is that wharfside?

Mr. Schwartz: I am going to ask him that, your Honor.

The Court: All right.

Q. (By Mr. Schwartz): What would you say it is for 1945?

Mr. Garrett: Same objection.

The Court: Same ruling.

The Witness: In 1945 I would say it would be approximately between \$125,000 to \$130,000.

Q. (By Mr. Schwartz): Do those purchases include the fish purchased at the wharf and the fish purchased from points outside of the wharfside?

A. That is total purchases.

Q. Now during the course of the year do you purchase from the wharfside, from fishermen, more in some months than in others?

Mr. Garrett: Leading, of course. Objected to on that ground.

The Court: Overruled.

The Witness: Yes. We purchased—some months the fish is better than others. I would say during summer months we [506] buy more fish as fish is plentiful during, I will say, May, June, July and August.

Q. (By Mr. Schwartz): Mr. Vitalich, some time during the month of May 1946 were you presented by anyone with a form of contract called

(Testimony of Vincent Vitalich.)

the Southern California Market Fishermen's Master Agreement? A. Yes.

The Court: Which is identified here as exhibit?

Mr. Schwartz: I am going to show it to him.

The Court: Isn't that the same as the other one?

Mr. Schwartz: Yes, sir.

The Court: Only for the purpose of the record.

Mr. Schwartz: I am about to do that.

Q. What is your answer?

A. Yes, I have.

Q. I show you Government's Exhibit No. 3, and ask you whether that is a copy of the agreement which you received at that time. [507]

* * *

A. Yes, sir.

Q. By whom was it presented to you?

A. It was presented to me by Mr. Zafran and two other men was with him.

Q. Do you see any of those men in the courtroom at this time?

A. I won't recall who they were.

Q. Do you know Mr. Zafran?

A. Mr. Zafran, yes.

Q. Can you identify him?

A. Yes, the gentleman sitting over there.

Mr. Schwartz: Will you stand up?

(The defendant Zafran stood as requested.)

Q. (By Mr. Schwartz): Is that the man who presented the contract to you? A. Yes, sir.

(Testimony of Vincent Vitalich.)

Q. Now looking over the other defendants, do you see any of them who were with him at that time? A. I couldn't recall it.

Q. Do you know their names?

A. No, I don't.

Q. Now on what date did that occur?

A. On the 20th of May.

Q. 1946? [508] A. 1946 is right.

Q. What if anything did Mr. Zafran say to you at that time?

The Court: I think you had better fix a place.

Q. (By Mr. Schwartz): Where did this take place?

A. In San Pedro, California; Municipal Fish Wharf.

Q. Was it in your place of business?

A. Yes, sir.

Q. Inside or outside?

A. I think it was right by the door.

Q. What if anything did Mr. Zafran say to you at that time?

* * *

Los Angeles, California, March 21, 1947

10:00 o'Clock A.M.

* * *

Mr. Rubin: May it please the Court, before the jury is called at this time it becomes necessary to make a statement to the Court concerning the examination of the books which your Honor permitted last evening.

Your Honor will recall, and the record so indicates, at the time Government's Exhibit No. 6 was admitted into evidence, an objection was made that that was not the best evidence and that the best evidence was the original books from which those original compilations were made.

Your Honor at that time ordered that the books be brought in court for the purpose of affording the defendants an opportunity to examine them to test the accuracy of those compilations. I have the record references marked if your Honor chooses to read them.

The Court: I recall that that was my ruling.

Mr. Rubin: The books were sent upstairs—and your [521] Honor also will recall that it was indicated that a representative of the Government should be present during that examination.

The Court: That is right.

Mr. Rubin: The books were sent upstairs, Mr. Ross and Mr. Fuss were present, Mr. Fuss was afforded an office and was further afforded an electrical adding machine.

After the court session was over Mr. Margolis, Mr. Andersen and Mr. Kibre proceeded upstairs and they commenced to examine the books. Mr. Alexander of our office remained in the room for a short period of time, I remained in the room thereafter for a very short period of time, and then by agreement between counsel Mr. Ross was excused. Mr. Ross had been waiting and had partici-

pated in describing what was in the books so that Mr. Fuss could make the necessary check.

After Mr. Ross was excused, I returned to this office where the examination was occurring and after observing information taken from the books which, in my opinion, were beyond the scope and purpose of the production of those records, I stated to those present whom I have named that in my opinion the purpose of that examination was solely to test the accuracy of Government's Exhibit No. 6 and for no other purpose, and Mr. Margolis stated that they would use those books for any purpose of their case.

I stated that he would do such thing, and he said, "Well, the only way you can stop us is to call a couple of cops." I left the room at that time. I didn't bother them for an additional period of time.

Shortly prior to 6:00 o'clock I went back in and they were obtaining information concerning species of fish, names from the books and dates of purchases, and again I remonstrated that that was not the purpose for which the books were submitted to their examination under the Court's ruling, and again asked them to cease. And they said that they would proceed.

I then prepared a written statement, which I desired to read to them, after which I asked Lieutenant Franz, the guard on duty in charge of this building, to come upstairs so that he would be present during the reading of this statement to these gentlemen. And he did come up.

I then called the four men—I believe they were then in the outer office—and I read to them the following statement:

“My understanding of the order of court with reference to Mr. Ross’ books is that you may examine them to test the accuracy of Government’s Exhibit No. 6. You have informed me that you will use the books for any purpose of your case. You are now asked whether you are taking any information from the books other than the figures, [523] the totals of which are represented by the compilations set forth in Government’s Exhibit No. 6, and if so you are asked to not examine the books further and to leave them until court convenes tomorrow.”

I am trying to eliminate the acrimony in this conversation. It may not shed any light upon the issue here.

Mr. Margolis stated that I had no right to order them as to any method of proof, and I stated that I felt my obligation was to see that the Court’s order in so far as I understood it was to be carried out.

Mr. Andersen then stated that I was entitled to no further statement from them other than that which they had given, and Mr. Margolis asked if they could go back and examine the books, and I said “only for that purpose.”

After other conversations these gentlemen left. This occurred at 6:00 o’clock last night. The books are now here. Mr. Ross is present. I have the

record and at this time, if your Honor please, I ask the Court's instruction in the matter. [524]

Mr. Margolis: May I be heard, your Honor?

The Court: Yes.

Mr. Margolis: The statement made by counsel is partially accurate and partially inaccurate; inaccurate in large part in what it omits.

Mr. Rubin came into the office where we were working and asked if we were doing anything more than adding up those figures which were represented by the totals in People's Exhibit 6. We said that we were, but that we would not tell him what we were doing; and that we did not have to tell him what we were doing, and that we were not subject to the supervision of Mr. Rubin as to the manner in which we inspected the books.

The information which we were taking from the books consisted of species of fish, pounds, and prices. It did consist of more than simply adding the totals which were shown opposite the bills of lading. It did not consist of taking the names—although I think we would have had the right to take that too—it did not consist of taking the names of any fishermen or any of the customers. We insisted again and again that we had a right to examine those books——

The Court: What was that? It did not consist of what? Read it.

(The record was read.) [525]

Mr. Margolis: (Continuing): ——in any manner that we wanted to for the purpose of cross-examining Mr. Ross with respect to them.

We told Mr. Rubin that we did not think we had to advise him in advance of the subject-matter of our cross-examination, or of the manner in which we were going to conduct our cross-examination.

Our position, very simply, is this, your Honor:

First. We are prepared to tell the court precisely what we were doing and the purpose for which we were doing it. We are not prepared, unless otherwise directed by the court, prior to the cross-examination, to reveal to the government the purpose for which we were gathering those figures. We feel that we have no obligation to advise the government in advance of exactly how our cross-examination is going to be conducted, although we have no objection to informing the court as to how our cross-examination is going to be conducted.

Second. As to our understanding of the law. The best evidence in this situation is the books themselves. Ordinarily, except for a modification of the best evidence rule, the books themselves would be required to be in evidence, and if the books were in evidence then we could utilize those books for any purpose material to the case, whether helpful to us or helpful to the theory of the prosecution. Under [526] the rule a summary may go into evidence not for the purpose of taking away from us the right which we would have if the books were in evidence to utilize those books for any purpose for which they were material, but simply for the purpose of preventing the record—from getting all of these books in the record and taking the books away from the business and preventing the business from

carrying on its ordinary operation, its means of going ahead. In other words, the rule permitting summaries is a rule of convenience and necessity, not a rule which is intended to deprive the party against whom the evidence is offered of all the advantages which would exist if the best evidence had been offered; and if the best evidence had been offered in this case, the books, I submit that we would have the right to cross-examine this witness with reference to anything which those books showed, which was material, and that the government could not limit its offer in those cases to prove its own point and say, "You can't prove anything by those books because we offered it only to prove our point."

If evidence goes in, unless limited by the court, it goes in for all purposes. The summary being merely a summary of what is in the books it is, in effect, as if the books had gone in, as far as our right to examine the books is concerned and to cross-examine the witness on the basis thereof.

We have in mind in preparing this information, collating [527] this data—as I said, I have no objection to telling the court specifically what it was—preparation of material upon the basis of which to cross-examine Mr. Ross.

Those are the facts.

The Court: The original exhibit and testimony of the witness Ross with relation to the amount of business that he did was material in connection with the necessary element of the charge that this was a

restraint upon commerce among the states. Whether it restrained it one barracuda less or more is immaterial, if there was a substantial restraint.

I think that I was under no compulsion, as a matter of law, under Section 695, to permit the examination of the books. I think that the exhibit, under the testimony and foundation laid by the witness Ross that they were taken from his books kept in the regular course of business, under that section would have permitted and required me to admit that document, Exhibit 6, without any examination of the books.

Maybe I could be pardoned for saying that I did not look with favor, as a lawyer, upon the enactment of the statute Section 695.

That is the law, and I must follow it. I have rather felt that at least a reasonable opportunity should be extended to some one to test the verity of figures that are put in tables and taken from books and summaries, and for that reason in the exercise of what I thought was some [528] discretion I made the order that these books should be made available for the defendants here to examine them for the purpose of cross-examining the witness Ross and testing his verity. I can't see any other materiality in that connection of the books. [529]

Mr. Margolis: How can that matter be determined, Your Honor, until such time as we put the questions and also are we limited—may I ask this—are we limited to presenting this matter by simply adding these figures? There are other ways of testing the veracity of those figures, and if I am forced

to reveal the method that we wanted to use, I shall do so. I prefer not to do so. I don't want to put the Government on notice, and Mr. Ross on notice, of what the basis of our cross examination is going to be, but I say that there is more than simply the adding of the figures as a means of testing the veracity of this particular exhibit, and I don't see how Mr. Rubin, and with all due respect, I cannot see how the Court, can determine the materiality of the questions that we are going to ask until we ask them.

The Court: I had not given any indication that would justify the remarks which you have just made of any anticipatory ruling. I have tried to outline the reason why I think the document is material and why the information contained in it is material, and why I permitted the defendants here to have an examination of the witness' books. This isn't a contest between Ross and these defendants here at all. If it were, Ross should be here with all of his books all the time. And if there is a mistake in the addition of figures—in other words, if there is some variance—I don't know how that would be material because the material thing is whether [530] or not commerce was affected, the commerce in fishing was affected, by the alleged conspiracy as set forth in the indictment.

In any event, I do not see any necessity for saying anything more at this time and I think that we are going to have to spend a little bit more time trying the law suit than listening to arguments in the future than we have in the past.

Mr. Margolis: Well, at this time, your Honor, we are going to ask leave to continue our examination of the books without supervision on the part of the Government as to the method which we use in devising our cross-examination.

The Court: I do not believe that you should be allowed, and I do not think it would be just or fair or right to the witness Ross, to permit his books here to be subjected to a complete audit and inspection and investigation of the privacy of his business. The question is whether or not the commerce in fish was affected. He was put on for that purpose.

Now Ross doesn't do all the fish business in the state of California, and I suppose that there will be cumulative evidence in that respect, but I am not going to permit a fishing expedition into Ross' business in order to enable the defendants to cross-examine the witness Ross as to one exhibit.

Mr. Margolis: Your Honor please, I want to say, to assume that we are engaged in a fishing expedition is unfair.

The Court: I did not assume that, I said I am not going [531] to permit it.

Mr. Margolis: We do not have any intention of engaging in a fishing expedition. At the same time, we either have to be permitted to examine these books or——

The Court: Mr. Fuss is an auditor, is he?

Mr. Margolis: No, he is not an auditor.

The Court: What is he?

Mr. Margolis: He is a research man.

The Court: He is a research man?

Mr. Margolis: That is right. He is familiar with books, however.

The Court: He is familiar with books, and he had from—it was about 4:00 o'clock yesterday afternoon until 6:00, is that correct?

Mr. Margolis: From 5:00 to 6:00 was spent in arguing.

Mr. Rubin: I beg your pardon. I would say about 10 minutes was.

The Court: Well, it was from 4:00 to 6:00. I think that was ample time for a man familiar with books to examine those books to conduct an examination concerning Exhibit No. 6.

Mr. Margolis: In order that the record may be complete, your Honor, I want to state that it was a physical impossibility to complete the examination within that time, and I am going to state now what we were doing. I am doing this because I see this is the only way that I can protect the record and I am going to have to reveal what my cross-examination was going to be.

Your Honor will recall that one of the questions that was asked Mr. Ross on cross-examination was how he explained that there was so small a difference between the amount which he paid for the fish and the gross which he received for the fish.

The Court: I do not think so.

Mr. Margolis: If I may finish?

The Court: I know, but let us get our facts right.

Mr. Margolis: As small as there was.

The Court: No, there wasn't anything said about small or large.

Mr. Margolis: The amount of the difference, your Honor. The amount of the difference ran to about, I would say, roughly 40 per cent. I may be off a little bit on the percentage.

A quick examination of the books—and I am not prepared to say that we have completed that examination or have arrived at any definite conclusion; we didn't have an opportunity to do that—a quick examination indicated that the price differential between what was paid and what was received ran about 100 per cent, and that a difference of about 40 per cent was simply inconsistent. We were therefore listing buying prices and comparing them with selling prices for [533] the purpose of seeing whether that differential which was shown to exist on there was at all consistent with his comparative buying and selling prices. Now I didn't want——

The Court: What difference does it make what profit he makes?

Mr. Margolis: Because, if your Honor please, if he was selling at a hundred per cent mark-up and the sum total shows only a 40 per cent mark-up, then there is something wrong with the figures. That is quite obvious. If a man sells his fish, keeps selling an item at a hundred per cent mark-up, then at the end of the year the total sales are only 40 per cent in excess of the total amount paid up, there is an error some place, either an error or a misrepresentation.

I don't want to say at this point that Mr. Ross has made an error or a misrepresentation. I am not prepared to say that. But I am prepared to say

that we had some indications that one of those two things had occurred, not enough yet to arrive at a conclusion.

The Court: It seems to me that that is immaterial. The figures are there. What his profit was is immaterial, and this lawsuit, as far as I can see——

Mr. Margolis: Mr. Ross himself told us while we were there that it took his girl three days to prepare the figures and we are given a sum total of, even accepting Mr. Rubin's statement as true, which I don't, two hours. [534]

If your Honor wants sworn testimony that Mr. Ross stated that it would take three days, that it took his girl three days, to prepare those figures we are prepared to give that sworn statement.

The Court: Call the jury down.

Mr. Garrett: May I be heard before you call the jury? I want to make a statment.

The Court: What about?

Mr. Garrett: I want to say, your Honor, that while I wasn't personally present at the incidents last night, I want the record to show that my position is the same as that of the other defendants as expressed by Mr. Margolis.

I have also, by way of observation, just two points to mention, and that is this: Unless I misconceive—I want to say, first, that I also distrust, I want to say flatly I distrust personally the figures submitted by Mr. Ross in the memorandum almost in their entirety for reasons which I think I have properly inferred from evidence given by Mr. Ross—I also want to say that unless I misread the Apex case I think that the extent of the interference with inter-

state commerce may be material in an adjudication of the case. We cannot speculate as to what future evidence may be given, we on the defense side at least, and as the evidence now stands the evidence of the memorandum adduced by Mr. Ross is the only evidence in the record which would indicate if interference with [535] interstate commerce occurred.

The Court: I appreciate that in the Apex case the Supreme Court said, because their hosiery didn't get into commerce that it didn't make it affect interstate commerce. As I see that document, the only thing that is material about it is that during the period here when they started to effectuate the conspiracy there was no fish moving into commerce. Otherwise I cannot see any materiality on whether he sold 8 million pounds of barracuda, or something else, 11 months before, or only 7 million pounds or only 3 million pounds or only 1 million pounds. It was the fact that the object of the conspiracy was intended to, and did, affect and restrain the commerce in fish.

Mr. Garrett: Might I be permitted to ask if your Honor would think it proper to add the words "and to what extent." If those words may properly be added——

The Court: Yes, and to what extent. But certainly to the extent of going into the books of this one witness, who is one dealer in fish, where assuming that his figures are anywhere near accurate, his total amount of fish bought in the year—what was it—somebody made the statement here, or it is in the indictment, that there was 20 million pounds. Here is 1,550,000 pounds of fish, is that right?

Mr. Rubin: One million pounds from outside of the state, if your Honor please, and about 20 million pounds in [536] this area over the seaward side.

Mr. Garrett: I have a little more to say on that point.

I would like to refer to something that I was ready to present to your Honor yesterday.

Mr. Margolis: If you have finished on that point, may I just have a minute?

Mr. Garrett: I will be through in just a second.

Mr. Margolis: Just so the record will be clear.

I want to ask leave at this time so that the record will be clear to present evidence in support of our position as to what happened yesterday, the statements of Mr. Ross as to how long it would take to examine those books, precisely what we were doing with respect to those books, so that there will be no question that the representation made——

The Court: No one has challenged your statement.

Mr. Margolis: I beg your pardon?

The Court: No one has challenged the veracity of your statement.

Mr. Margolis: The Statement then I assume is accepted as true for the purpose of your Honor's ruling?

The Court: Whatever this is.

Mr. Margolis: Then I ask for a ruling on my request that we be allowed to examine the books without further supervision.

The Court: The request is denied.

Mr. Margolis: May I make a request that we be permitted to continue to examine the books for the purpose of further checking the figures first and, second, for the purpose of comparing the purchase price and sales price of the various types of fish as shown by the books of Mr. Ross?

The Court: Your request is denied.

* * *

Mr. Magolis: I move to strike out Government's Exhibit 6 from the record.

The Court: The motion is denied.

Mr. Margolis: At this time I move to strike all of the testimony of Mr. Ross with respect to Government's Exhibit No. 6.

The Court: The motion is denied.

* * *

Mr. Magolis: And with respect to the amount of fish receive by him, purchased by him, where it was purchased, how it was purchased, with respect to the amount of fish sold by him, and where it was sold, the amounts for which sold, that that be also stricken from the record. [539]

The Court: Well, I will presently adhere to my ruling and we will proceed.

I want to say again that I think that the materiality of this document is that it shows the flow of fish as far as this one merchant is concerned, and whether it is a few pounds or anything other than a very material amount in pounds [541] or dollars to me is immaterial.

About the only value that I can see that this chart has in evidence could have been formed by

what the research men and statisticians call an extrapolation of figures. In other words, a chart would have performed practically the same thing based upon his figures.

Call the jury down.

Has somebody else got something else to say?

* * *

Mr. Rubin: May I inquire of counsel if they propose any further cross-examination of Mr. Ross so that we might know whether to excuse him?

Mr. Andersen: We have been deprived of the right to cross-examine him.

The Court: You have not been deprived of the right of anything, Mr. Andersen, and I don't like your repeated implications contained in your remarks that this court is depriving you of something you have the right to.

Mr. Margolis: We have been deprived of something which in our opinion we have a right to, and which we think the law gives us the right to, and I think we have the right to state that for the record.

The Court: I don't think you have a right to state that, and I don't think you have a right to insinuate that, [542] especially in front of the jury.

Mr. Andersen: The jury isn't here, your Honor.

The Court: I know the jury isn't here, but I am taking the occasion to remark on it because this isn't the first time that has occurred. Under orderly procedure the responsibility is mine to determine how evidence shall go in.

Do you wish further cross-examination of Ross or not?

Mr. Margolis: We want the record to show this, your Honor; we do wish further to examine Mr. Ross; because of the court's ruling with regard to the examination of the books were are unable to cross-examine him any further.

* * *

The Court: All right. Mr. Ross may be excused, then.

Do you have any further questions of him?

Mr. Rubin: No. May he take his books with him?

The Court: He may be excused and take his books.

Call the jury down. There was a witness on the stand, was there not?

Mr. Schwartz: Yes; Mr. Vitalich.

(the following proceedings were had in the presence of the jury:) [543]

* * *

VINCENT VITALICH

Resumes the stand on direct examination.

Q. (By Mr. Schwartz): When we adjourned yesterday I was asking you, Mr. Vitalich, about this Government's Exhibit No. 3, the Southern California Market Fishermen's Master Agreement. I believe you stated that Mr. Zafran and some others brought it in to you. What was said by Mr. Zafran at the time this Exhibit 3 was handed to you?

The Court: Has that date been fixed?

Mr. Schwartz: I don't recall, but I will ask him.

Q. (By Mr. Schwartz): What was the date?

A. 20th of May.

Q. May 20th? A. Yes, [544]

(Testimony of Vincent Vitalich.)

Q. 1946? A. 1946, yes, sir.

Q. At what time of the day?

A. I can't recall it.

Q. All right. What was said by Mr. Zafran to you at the time this contract was presented to you?

A. Mr. Zafran——

Q. Keep your voice up; I can't hear you.

A. Mr. Zafran handed me the contract, and I says, "What is this for?"

He says, "The fish contract from the fishermen."

And I says, "What is all about it?"

He says, "Well, read it and sign it. I will pick it up."

Q. What did you say?

A. I just took the contract and I said, "All right, I will read it."

Q. Was that the end of the conversation?

A. That's right.

Q. Were you present at your place of business at this wharf the morning of May 29, 1946?

A. I may have been there; I may not. I can't recall if I been there or not.

Q. Do you recall seeing any men around your place of business walking around with placards?

Mr. Margolis: Objected to on the ground it is incompetent—— [545] A. Yes.

The Court: Well, it is leading.

Q. (By Mr. Schwartz): Do you recall anything unusual at your place of business on or about the 29th of May, 1946?

(Testimony of Vincent Vitalich.)

“Q. Do you recall anything unusual at your place of business on or about the 29th of May, 1946?”

The Witness: Yes.

Q. (By Mr. Schwartz): Will you state what that is?

Mr. Margolis: Same objection.

The Court: Same ruling.

* * *

A. I came down at the place of business and I discovered there was a bunch of men walking up and down in front of our place——

* * *

A. (Continuing): ——with the placards in their hand, walking up and down. And we were told they were picketing fish markets.

Q. I didn't get the last.

A. We were told they were going to picket the fish markets.

Mr. Margolis: Just a moment. I move to strike the entire answer on the ground that it is incompetent, irrelevant and immaterial, has no relation to any issue in this case; the last part of the answer starting with the words, “we were told that” on the ground that it is hearsay.

* * *

The Court: Well, the last part may be stricken; otherwise [547] the objection is overruled, the motion to strike denied.

(Testimony of Vincent Vitalich.)

Q. (By Mr. Schwartz): I show you Government's Exhibit No. 1, and ask you whether you saw the people walking around as is portrayed in the exhibit.

Mr. Margolis: May we have a general objection——

Mr. Schwartz: Just a minute.

Q. (By Mr. Schwartz): ——as you have just described in your previous answer?

Mr. Margolis: May we have a general objection to this line of questioning?

The Court: Surely. It will be deemed that the defendants have objected to each and every question on the grounds heretofore indicated concerning this line of testimony from this witness, and the objection is overruled.

Q. (By Mr. Schwartz): Go ahead, Mr. Vitalich.

A. Yes, I saw men walking up and down with similar placards, and I won't swear it was all these men the same day, some of these faces were familiar either that day or for about a month.

Q. For about a month?

A. For about a month. I saw these men either one day one group, maybe next day there would be another group; but these faces are familiar, some of them I recognize that I saw them at the place at the strike.

Q. Were any of the defendants engaged in walking up [548] and down as you have just described with placards during this month of June, 1946?

A. You mean the men in the court room?

(Testimony of Vincent Vitalich.)

Q. The men in the court room. A. Yes.

Q. How many do you recognize?

A. I recognize Tom Sawyer and a man by the name of Chris Kennison——

Q. May we have the gentleman who he is referring to stand up, your Honor?

(The defendants Sawyer and Kennison stood.)

The Witness: I believe I saw George Knowlton there.

The Court: Mr. Knowlton.

(The defendant Knowlton stood.)

The Witness: I saw a man by the name of Bunny Smith.

The Court: Mr. Smith?

The Witness: He is not here.

The Court: Mr. Smith is not here?

(The defendant Smith stood.)

The Witness: Not F. R. Smith, Bunny Smith.

The Court: Not this Mr. Smith?

The Witness: No.

I think that is all I can recall.

Q. (By Mr. Schwartz): Were these men walking up and down as you have described on the pier side or the truck side, the landward side?

A. On the truck side.

Q. Now, I show you Government's Exhibit 2——

The Court: You are not suggesting that these men were [550] walking up and down on the water side, are you?

(Testimony of Vincent Vitalich.)

Mr. Schwartz: There are two piers, the dock side and the sea side.

The Court: I understood there was only the sea side and the land side.

Q. (By Mr. Schwartz): I show you Government's Exhibit 2 and ask you whether you saw the situation as it is portrayed in that picture.

A. Yes.

Q. Do you recall what day that was or what date?

A. It was about the first or second day after we discovered there were pickets on the truck side, and about the first or second day I saw this boat with an "unfair" sign on top.

Q. Now directing your attention to that boat you have just referred to having a sign on the fore part of the ship, how long did you continue to observe that vessel in that area there?

A. I don't remember how long they stood there.

Q. Approximately.

A. I don't remember how long they stood there.

The Court: It isn't there yet, is it?

The Witness: No, not there any more.

The Court: Can you give us some idea then?

The Witness: Well, approximately I saw them three or four different times, and I didn't come down to the fish market every day after I knowed that I couldn't receive any fish.

Mr. Margolis: Just a moment. I move to strike that "I could not receive any more fish" as not responsive.

(Testimony of Vincent Vitalich.)

The Court: It may be stricken as a conclusion of the witness, that portion of the answer.

Q. (By Mr. Schwartz): Now, during the month of June 1946 did you see this boat bearing this placard on the fore part of it out in the area in front of the Municipal Fish Wharf?

A. Yes, sir.

* * *

Q. During the month of June, Mr. Vitalich, did you purchase any fish from fishermen on the sea side of your establishment? A. No, sir.

Q. When did you make your first purchase again from fishermen, any quantities of fish after the occurrences which [552] you have just related, on or about what date?

A. On the 1st of July.

Q. On what? A. First of July.

Q. During the month of June 1946 did you receive any deliveries of fish from points outside of the state of California at your place of business?

A. No, sir. I was closed entirely.

Q. You were what?

A. I was closed entirely.

Q. Your business was closed entirely?

A. Yes, sir.

* * *

Q. During the month of June 1946 did you ship from your place of business by truck or otherwise from the land side any fish?

A. No, I didn't ship any but I took my truck and went to the Union Ice——

(Testimony of Vincent Vitalich.)

Q. I am coming to that. My question related strictly to your place of business. Did you ship any fish from your place of business by truck during the month of June 1946? [553] A. No, sir.

Q. Did you conduct any fish business at all during the month of June 1946?

A. I made one sale. I took my own truck and went to the Union Ice & Cold Storage Company in Wilmington and picked up, I think it was, 2000 pounds of fish, in that neighborhood, and delivered it to Los Angeles. That was the only sale I made during that month.

Q. Do you recall about when that was?

A. No, I can't recall it.

Q. Where had that fish at the Union Ice Company that you just referred to come from?

A. We put it there in storage ourselves.

Q. Where had it come from?

A. My company.

Q. It came from your plant?

A. From my plant. We put it in the Union Ice & Cold Storage Company.

Q. Why did you do that?

Mr. Margolis: Just a moment.

Mr. Garrett: Objected to as immaterial.

Mr. Schwartz: There may be some relevancy. I didn't know about this either.

The Court: He testified yesterday that he had a Union Ice storage and then he bought fish and put it in storage in [554] his course of business.

(Testimony of Vincent Vitalich.)

Mr. Schwartz: As I understand it, your Honor, he testified that he has an icebox——

The Court: He has an icebox in his place. Do you in the course of business rent storage space?

The Witness: We pay the Union Ice and Storage for freezing and keeping our fish and after that we pay so much each month.

Q. (By Mr. Schwartz): For doing what?

A. We pay so much each month to the Union Ice & Storage Company to keep our fish there after it is frozen.

Q. At their place or your place?

A. At their place.

The Court: In other words, you keep at your place iced——

The Witness: Iced.

The Court: And you keep fish frozen at their place?

The Witness: Frozen fish we keep at the Union Ice & Storage Company.

The Court: From both of which you sell to your customers?

The Witness: That is right.

Q. (By Mr. Schwartz): By the way, is the Catalina Fish Company a corporation [555] or a copartnership?

A. It is a copartnership.

Q. What is your relationship to the company?

A. Manager.

Q. What is the extent of your interest in the company?

A. Half.

(Testimony of Vincent Vitalich.)

Q. Are you familiar with the amount of business which your company engages in shipping or purchasing fish from out of the state of California or to points out of the state of California?

* * *

Mr. Schwartz: Yes.

The Court: Do you know?

The Witness: No, I don't know exactly.

The Court: Generally.

The Witness: We don't buy very much out of the state of California.

Q. (By Mr. Schwartz): Do you ship fish to points out of the state of California?

A. Yes, we do.

Q. Do you know approximately what percentage of your business is represented in that particular category?

* * *

A. No, I don't know exactly.

Q. Do you know approximately what percentage it would be? [557]

The Court: Do you know how much?

The Witness: No, I don't know exactly.

The Court: Well, approximately.

The Witness: I would say——

Q. (By Mr. Schwartz): Just say yes or no. Do you know approximately? A. Yes.

Q. Now my question is, what is that percentage?

Mr. Garrett: Just a minute. May I take the witness on voir dire?

The Court: Yes.

(Testimony of Vincent Vitalich.)

Voir Dire Examination

* * *

Q. Have you got a bookkeeper?

A. Yes, sir.

Q. What is his name? A. What?

Q. What is the name of the bookkeeper?

A. At the present Mrs. Terrill.

Q. Was Mrs. Terrill keeping your books in 1946 too?

A. I believe she did, yes. She came in in the last part of 1946, last part of the year.

Q. Who was your bookkeeper at the time of this trouble in 1946 in the summer, midsummer, June and July?

A. I believe it was a lady by the name of Voorhees.

Q. What were her duties when she worked for you?

A. She kept the books for us; bookkeeping.

Q. Full time job, was it? A. Yes, sir.

Q. Down there at the wharf, do you handle all the money that is paid out to the fishermen for fish?

A. What?

Q. Do you handle the money down there through the office? [562] A. Yes, sir.

Q. You handle all the money that comes in through that office too? A. Yes, sir.

Q. And then when money is paid out why you put it in these books that these bookkeepers keep, is that right? A. They keep the records.

(Testimony of Vincent Vitalich.)

Q. When money comes in from your customers that goes into these books too, is that right?

A. Correct.

Q. You don't keep them yourself, you hire somebody to do it, is that right? A. Right.

Q. First Mrs. Terrill and then Mrs. Voorhees?

A. Then another lady came in for a couple of weeks, and we weren't satisfied with her so we hired this Mrs. Terrill.

Q. Anyhow, you don't do the bookkeeping yourself, is that right? A. No, sir.

Q. And never have done it yourself, have you?

A. No, I don't keep the books.

Q. You are no bookkeeper, are you?

A. No, sir. I understand the books, though.

Q. Neither is Mr. Mericovich? [563]

A. No, sir.

Q. All right. Those books you have been talking about are the regular books of the partnership, are they? A. Yes, sir.

Q. You don't keep any other sets of books, do you? A. No, sir.

Q. Just that one set of books that is down there at the wharf, is that right? A. Correct.

Q. And is that set of books there right now?

A. Yes.

Q. And is that set of books the same set of books you were using in the summer of 1946?

A. Yes, sir, all except the records that I brought upstairs.

(Testimony of Vincent Vitalich.)

Q. All except the records you brought upstairs?

A. Yes.

Q. Did you make a selection of your records and bring it upstairs? A. My bookkeeper did.

The Court: I do not think that this goes to voir dire, counsel.

Mr. Garrett: It puts the original records a little closer to the courtroom than San Pedro, your Honor.

The Court: I do not think it goes to voir dire or his [564] competency to testify on this question or his knowledge.

Mr. Garrett: I have no further questions on voir dire, your Honor.

Wait a minute. Just one further question, if I may.

The Court: Surely.

Q. (By Mr. Garrett): Those books you say that were taken upstairs, were they taken to the offices of these gentlemen seated here representing the Government, that is, the Antitrust Division of the Department of Justice?

A. I took it upstairs in their office.

Q. What office? A. On the 16th floor.

Q. Is that the office of these gentlemen who are sitting here representing the Government?

A. I believe it is.

Mr. Garrett: No further questions on voir dire.

The Court: Proceed.

(Testimony of Vincent Vitalich.)

Direct Examination

(Continued)

Mr. Schwartz: I think we had a question propounded to the witness.

Mr. Garrett: I have to object now if there is a question before the witness. If there are no further questions on voir dire, I am going to object.

(The record referred to was read by the reporter, as [565] follows:

“Q. Just say yes or no. Do you know approximately?

“A. Yes.

“Q. Now my questions is, what is that percentage?”)

The Court: Percentage of what?

Mr. Schwartz: Business.

The Court: Fish that he sold outside of the state of California?

Mr. Schwartz: Yes.

Mr. Garrett: I object to that as calling for hearsay, not the best evidence.

The Court: Mr. Vitalich, at the end of the year do you go over your books at any time to find out how much business you do?

The Witness: Yes, sir.

The Court: Objection overruled.

Mr. Margolis: Your Honor please, at this time before the question is answered we ask that the

(Testimony of Vincent Vitalich.)

witness be ordered to bring in his books upon which the answer is based so that we may examine the books prior to cross-examining this witness.

Mr. Garrett: I join in that request, particularly on the basis of the last case I handed up to your Honor.

Mr. Schwartz: And we object to the request by counsel on the ground that the witness has stated the course of his business. He states he knows how much business he does. We [566] do not see that the records are necessary except to prolong this trial.

The Court: The motion is denied. The objection is overruled. You can answer the question. [567]

* * *

Q. (By Mr. Schwartz): What is the answer to that percentage question on sales out of the state of California?

A. In what year?

Q. Let's begin with 1945.

A. In 1945 my percentage out of state, I would say, would be about 10 per cent.

Mr. Margolis: Just a moment. I move to strike the answer on the ground that the effect of the Court's ruling, stating that we cannot have the books, would deprive us of any opportunity to cross examine this witness at all.

The Court: Objection overruled. Motion denied.

* * *

Q. (By Mr. Schwartz): What about 1946, Mr. Vitalich?

(Testimony of Vincent Vitalich.)

Mr. Margolis: May we have a standing objection and a [568] standing motion to strike?

The Court: That is correct, to each question along this line. I thought that that was understood some time ago, but if not it will be so understood now without repeating the objection each time.

Q. (By Mr. Schwartz): What about 1946, what percentage of your sales was fish shipped out of California?

A. I can't recall it. If you gentlemen want to come to my office and I open up the books for you, I can tell you exactly what I got.

Q. Will you give us an approximation? We are trying to save some time.

A. I know the books when I look at them.

Q. Can you recall, or do you know approximately, what that percentage is?

Mr. Margolis: Just a moment. Objected to on the ground that that question has been asked and answered. The witness has said that the books show that it is and he doesn't know.

The Court: The witness says that he doesn't remember. That is the effect of his answer.

Q. (By Mr. Swartz): Did you ever sign this contract, Government's Exhibit No. 3?

A. No, sir. [569]

Q. Are you under subpoena here by the Government? A. Yes, sir.

Mr. Schwartz: That is all. [570]

(Testimony of Vincent Vitalich.)

Cross-Examination

By Mr. Garrett:

Q. Mr. Vitalich, what records did you bring up here?

Mr. Schwartz: I object to any further reference to records, your Honor, as being incompetent and immaterial.

The Court: Objection sustained.

Q. (By Mr. Garrett): What period was covered by the records you brought up here?

Mr. Schwartz: I object to any reference to records. I thought your Honor ruled on that.

The Court: Objection sustained.

Mr. Garrett: Am I to understand by your Honor's ruling that I am foreclosed from any inquiry whatever concerning the [571] records brought by this witness to the Department of Justice in connection with this case?

The Court: Yes, I think so.

Mr. Garrett: Is my understanding correct, if your Honor please?

The Court: Yes, that's right.

Q. (By Mr. Garrett): Was there anything more to that first conversation with Zafran that you testified to on direct than what you told the government's attorney?

A. What is that?

Q. You said that Zafran asked you to sign the agreement, and that you said you would read it.

A. Yes.

(Testimony of Vincent Vitalich.)

Q. On the occasion of that conversation when the agreement was first presented, do you recall that testimony?

A. Yes, sir.

Q. Who else was there besides you and Mr. Zafran,—anybody whose name you know?

A. There was two other men with them, but I don't know the names.

Q. Did either of them say anything that you remember?

A. No, I don't remember.

Q. Was there anyone there with you, anyone that worked for you there in the office?

A. I don't remember anyone being there. [572]

Q. Your partner wasn't there, I take it?

A. I don't recall it.

Q. Do you recall anything else that was said by anyone in that conversation?

A. Not except Mr. Zafran.

* * *

Q. (By Mr. Garrett): Do you recall anything else that was said by either you or Mr. Zafran in that conversation which you haven't already mentioned?

A. No; I already mentioned everything that was said.

Q. You told us everything that was said in that conversation as far as you can remember?

A. As far as I can remember, yes, sir.

(Testimony of Vincent Vitalich.)

Q. Let's see, you testified that you closed your business during the month of June, is that right?

A. Right.

Q. Were you down there at the wharf at all during the month of June?

A. Yes, I was.

* * *

Q. (By Mr. Garrett): And you testified you opened again July 1st, is that right?

A. Right. [573]

Q. (By Mr. Garrett): You were in the meeting down at the wharf on June 10th, were you not?

Mr. Schwartz: I object to that on the ground it is improper cross examination, not having been gone into on direct.

The Court: Sustained.

Q. (By Mr. Garrett): You were at a meeting down on the wharf on June 11th, 1946, were you not?

Mr. Schwartz: Same objection, your Honor.

The Court: Same ruling; objection sustained.

Mr. Garrett: I take it by your Honor's ruling that I will be precluded from going into any meetings with this witness which he attended during the month of June, 1946?

The Court: The reason for sustaining the objection was because none of those meetings were covered in the direct examination of this witness, and as I indicated yesterday [577] the party producing the witness has a right to limit their cross examination by the questions they ask on direct

(Testimony of Vincent Vitalich.)

examination; and counsel is well aware of the means available, at law, to secure testimony from this witness if they desire other than on cross examination.

* * *

The Court: The only conversation—there was no meeting testified to on direct except the one meeting with Zafran, that is all, and any other meetings besides that were not opened on direct examination, and, therefore, under the rules if you are precluded from going into them on cross examination.

* * *

Q. (By Mr. Garrett): I think you testified you were buying fish prior to June, 1946, Mr. Vitalich, is that correct? A. Yes, sir.

Q. You were buying fish on that wharf for 10 years [578] prior to that time, were you not?

A. About 10 years; 13 years, I believe.

Q. Continuously, is that right? A. Yes.

Q. Buying fish there from the fish boats, is that right?

A. Fish boats, different trucks that come from outside.

Q. During that period you testified to as having been in business down there, were you ever a member of the Fish Exchange? A. Yes, sir.

Q. At the time of this trouble in the summer of 1946 were you a member of the association that followed it known as the Fish Association?

A. Yes, I was a member of the association.

(Testimony of Vincent Vitalich.)

Q. You knew Mr. Ross, did you not, through your being a member with him in those two associations, as well as being a fellow merchant there on the wharf? A. That's right. [579]

* * *

Q. (By Mr. Garrett): You were buying fish in 1939, were you not? A. Yes, sir.

* * *

Q. I will rephrase it. Do you remember yesterday how you told us how you went down and met the boats when they came in and how you bought the fish without inquiring of anybody what the other dealers were offering, you just paid [580] whatever you felt was right to pay for the fish,—do you remember your testimony as to that?

A. Yes.

Q. Do you remember testifying you never talked with any of the other dealers about the price you were going to pay for the fish, or what they were going to pay for it,—do you remember testimony like that? A. Yes.

Q. That is all true, of course, isn't it, Mr. Vitalich? A. That is right.

Q. And it always has been true, hasn't it?

* * *

A. In 1939 when we had the Exchange we had a man hired that would prorate the fish and divide the fish to each market so much.

Q. (By Mr. Garrett): And you had that two per cent business at that time, did you not?

A. I don't recall how much it was.

(Testimony of Vincent Vitalich.)

Q. Have you a copy of that cease and desist order? A. No, I haven't.

Q. Who is your lawyer?

A. Right now? [581]

Q. Yes. Mr. Ekdale or someone else?

A. I have no personal lawyer.

Q. Who is your lawyer?

The Court: He says he has none.

Q. For the business?

The Court: Everybody ought to have a lawyer, I concede that.

The Witness: If I need a lawyer——

The Court: Do you have a regular lawyer for your business?

Witness: No, sir, I don't.

The Court: Would you know where to find a copy of that cease and desist order?

The Witness: At that time we had—I believe it was Mr. Hix.

The Court: Were you a party to the cease and desist order?

The Witness: Yes, sir. [582]

* * *

Q. (By Mr. Garrett): The question was: Have you or your firm, your business, has it had any lawyer since Mr. Hix? A. Yes.

Q. Who? A. Mr. Ekdale. [583]

* * *

Q. Did you participate now in any meetings in the month of June 1946 with Mr. Ekdale at which Mr. Zafran was present?

(Testimony of Vincent Vitalich.)

Mr. Schwartz: Same objection, your Honor.

The Court: Same ruling.

Q. (By Mr. Garrett): Did you participate in any meetings with Mr. Zafran other than the one you have told us about in the month of June 1946?

Mr. Schwartz: Same objection, your Honor.

The Court: Same ruling, not within the scope of the direct examination.

Q. (By Mr. Garrett): Did Mr. Zafran ever tell you anything after that first conversation that related to the same subject that you talked about in the first conversation, that is, the contract, or the situation, the dispute, between you and the [584] fishermen.

Mr. Schwartz: Same objection, your Honor.

The Court: Same ruling.

Q. (By Mr. Garrett): Have you bought fish from all of these fishermen who are defendants here in the past?

A. I won't say all of them; I bought fish from some of them.

Q. Don't you usually buy fish at the same prices that are being quoted at the time by the other fish dealers on the wharf? [585]

* * *

The Witness: Our company—on the wharf side, on the water side, direct from the fishermen without asking anyone else what they are going to pay. I merely go down to the boat and say, "Mister, have you got any fish, and what kind of fish have you got," and if he tells me what kind of fish he has

(Testimony of Vincent Vitalich.)

got and I like the fish I offer him the price. If he sells it to me I will buy it. And if he says, "Well, I am going to go down the line, I want to find out from the other dealers if somebody is going to pay me more money, then I will come back."

Usually when there is a large boat, come from Mexico, the man distributes the fish himself. That happened a couple of days ago. A boat by the name of New Admiral come in and he said, "'Vince,' you want my barracuda?" [586]

I said, "Yes. How much you got?"

He said, "Not very much."

And I said, "How much to you want for it?"

And he said, "I want 22 cents."

I said, "All right. Give me a ton."

He said, "Well, I don't know if I can give you a ton or not, I am going to go down and find out what the other fellows want, if they want to buy any or not."

So he went down the line and found out the market didn't want to buy fish at that price. He comes back to the boat and consults with the crew. Some market offer him 21 cents. And he says, "It is better for us to sell the whole load at 21 cents than it would be to sell a thousand pounds at 22 cents and let the rest of it stay on the boat for the next day."

And he comes back to me and he says, "'Vince,' if you want the barracuda I can make you pay me 22 cents, but I will not. I won't take \$20 away from

(Testimony of Vincent Vitalich.)

you because I sold the other fellow at 21 cents and it wouldn't be fair to you that I charge you more than anybody else."

And also we buy fish from the trucks, say, for instance, like Mr. Zafran called me about a month ago and asked me if I wanted any halibut.

I says, "What is the price?"

He says, "Twenty-four cents."

And I said, "Gilbert, that is too high." I said, "I don't [587] think I want any."

And he says, "Well, I am going to bring it to San Pedro. Maybe you might buy some tomorrow."

I said, "I won't promise you."

And he brought the fish to San Pedro, where from I don't know, it came on the truck, and he come back to me the next day and he was trying to sell me halibut for 22 cents, due to the fact that the price went down, there was a lot of fish up north which interfere with this local fish when it was plentiful.

Then about an hour later or two hours later Mr. Zafran comes back again and offered me halibut at 15 cents a pound, and I says, "Gilbert, I like to help you out but I got some halibut on hand, my fish that I can't dispose of, therefore if I can sell any I will be glad to help you."

And I understood the result was he sold the halibut at 15 cents a pound to one of the dealers down in San Pedro.

Q. (By Mr. Garrett): Are you all through?

A. Yes, sir.

(Testimony of Vincent Vitalich.)

Q. Can you tell me, do you know why the captain of that ship from Mexico, why would he ask his crew whether he could sell you any fish?

* * *

The Witness: I don't know. [588]

Q. (By Mr. Garrett): You don't know anything about it? A. No.

Q. And that is the reason you don't have any meetings with the other fish buyers about the price of fish, is that the reason, just what you have told me?

A. We have no meetings with other buyers; no.

Q. Have you had—this account you have just given, which is quite like what you said yesterday—did you ever have any meeting with either Mr. Ross or with Mr. Ross and Mr. Ekdale in which you discussed what you would say here on the stand about fish and how it was bought?

* * *

The Witness: No, I never had a meeting. [589]

* * *

Q. Were you a member of any committee of the fish dealers on the wharf at the time of the conversation with Mr. Zafran which you have already related here on direct examination [590] by Mr. Schwartz? A. Yes, I was.

Q. And that committee was appointed by the association, was it? A. No, sir.

Q. Did all of the dealers get together and appoint a committee?

(Testimony of Vincent Vitalich.)

Mr. Schwartz: If the Court please, I object to this line of questioning as to any reference to a committee or service on a committee or anything of that nature.

The Court: He said that he and Mr. Ross were members of the committee at the time of his conversation with Mr. Zafran on the 20th. Counsel has a right to explore it to see if it has any relationship to this conversation with Zafran.

Q. (By Mr. Garrett): In view of your Honor's ruling I will withdraw the question and ask, how was that committee appointed?

A. After we were asked to sign a contract and all the dealers were talking——

The Court: Was that after May 20?

The Witness: After May 20.

The Court: I do not think it is within the scope of the direct examination then. I understand it was before May 20th.

Mr. Garrett: So did I by his previous answer. It may [591] still be the fact that his previous answer is the true one and in subsequent one——

* * *

The Court: I think in view of that that the conversation is not admissible as being without the scope of the direct examination. The objection will be sustained.

* * *

Q. (By Mr. Garrett): When were you first asked to sign a contract? A. On May 20.

(Testimony of Vincent Vitalich.)

Q. When did they first talk to you about this contract? [592] A. Who?

Q. When did anyone first talk to you about a contract for the fishermen?

A. I don't remember.

Q. Was it before May 20 or after May 20, was it in 1935 or 1936, was it 1945 or 1946?

A. I don't remember.

Q. You don't remember when you were first asked to talk about the contract?

A. The first I know was May 20, to my knowledge. [593]

* * *

Q. (By Mr. Garrett): Isn't it a fact that you were represented at meetings before May 20th, meetings with the fishermen?

A. I do not remember.

The Court: You don't remember what?

The Witness: If it was before May 20th.

* * *

Q. (By Mr. Garrett): You talked to Mr. Zafaran before May 20th about contracts, didn't you?

A. On May 20th.

Q. How about before May 20th?

A. I have no knowledge.

Q. Didn't you have contracts before May 20th?

A. I don't remember. I have no knowledge. [596]

* * *

Q. (By Mr. Garrett: The first time you remember talking with anybody representing the union about anything that had to do with the way you

(Testimony of Vincent Vitalich.)

bought fish or the price you paid for fish was on May 20th, 1946, is that your testimony?

Mr. Schwartz: If the court please, I object to that on the ground that counsel is stating a fact which is not in evidence. [597]

The Court: Well, the union hasn't been identified, as far as this witness is concerned here yet.

Q. (By Mr. Garrett): You know the union I am talking about is Local Union 36 of the Fishermen, is that clear to you? A. Yes, I know.

Q. When I say "union" you know I am talking about Local 36?

A. No, I don't know what union you are talking about.

Q. We haven't talked about any other union, have we?

The Court: We haven't talked about any with this witness.

Mr. Garrett: All right.

Q. (By Mr. Garrett): What name was there on that paper that Mr. Zafran handed you? Was there the name of any labor union on that paper?

Mr. Schwartz: I object to that on the ground that the document speaks for itself, if the court please. It is in evidence.

The Court: Are you testing his recollection now?

Mr. Garrett: Yes. He said he read it. He went over every page and carefully examined every page before he identified it.

(Testimony of Vincent Vitalich.)

The Court: He must be a lightning reader if he read that document while he was examining it here on the witness stand. If your question is whether or not he remembers what was the [598] signature on the document, if any, it is permissible. If that is what you are getting at.

Mr. Garrett: That is what I am asking him, your Honor.

The Court: All right. Do you remember the signature on the document, if any?

The Witness: I don't remember whose signature it was. It was some one's signature on there. And I tell you the truth, I wasn't interested after I read the contract whose signature was on the contract.

Q. (By Mr. Garrett): You don't know now who the organization was that was to be the other party to that contract that you were presented with, is that right?

A. Yes, I know who the organization was.

Q. Do you know its name?

A. They call them Small Boat C.I.O. Union.

* * *

Q. (By Mr. Garrett): There wasn't any such union as that back in 1939, was there, as far as you know?

A. I don't remember.

Q. 1940,—do you remember any union of small boat owners? A. Yes, C.I.O. union.

(Testimony of Vincent Vitalich.)

Q. Was that formed before or after you and the other [599] dealers had the trouble in 1939 when Mr. Hix represented you?

A. The Small Boat Union?

Q. Yes.

A. C.I.O. union? I don't know when they formed.

* * *

Q. (By Mr. Garrett): When did you first have any negotiations, if you ever had any, with this Small Boat Union which we have now identified?

A. On May 20th.

Q. Never any before that?

A. Not that I can remember. [601]

* * *

Q. What did you do when you went down to the wharf during the month of June when your business was closed? Tell me some of the things you did.

A. I might talk to someone. I didn't do anything particularly, smoke cigars.

Q. Did you go to any meetings during that period?

Mr. Schwartz: Just a minute. If the Court please, I object to this question and any question of similar nature regarding any meetings, as improper on cross examination. I thought it had been ruled on previously.

Mr. Garrett: This is preliminary, your Honor. I think the objection might lie if and when I start to go into a meeting.

(Testimony of Vincent Vitalich.)

The Court: I think that is correct.

Did you go to any meeting is permissible.

The Witness: Yes, I did.

Q. (By Mr. Garrett): Were they meetings that were attended by other fish dealers at the wharf?

Mr. Schwartz: If the Court please, I submit we are going into that territory that I thought had been proscribed by the [606] Court.

Mr. Garrett: This is preliminary, your Honor.

Mr. Schwartz: I don't think it is preliminary.

Mr. Garrett: On the foundational questions before I had established the fact that there were meetings, and in order for the record to show what is being excluded, or that something is being excluded, I think we will have to show that there were meetings concerning which testimony has been sought to be elicited.

Mr. Schwartz: If the Court please, I submit that the question in the form that it is put is not a preliminary question, that it is outside the scope of the direct examination. If he wants to call the witness as his own witness, I am sure he can do so, but not on cross examination at this time.

Mr. Garrett: I think it is obvious that this is a hostile witness.

The Court: To whom?

Mr. Garrett: To the defendants.

The Court: Objection sustained.

Q. (By Mr. Garrett): In the month of June, did you go to any meetings in San Pedro at which the defendants Kibre or Zafran were present?

(Testimony of Vincent Vitalich.)

Mr. Schwartz: Same objection, your Honor.

The Court: Same ruling. [607]

Q. (By Mr. Garrett): Did you go to any meetings in June at San Pedro at which either Mr. Ross or Mr. Ekdale or both of whom were present?

Mr. Schwartz: Same objection, if the Court please.

The Court: Same ruling.

Was the time fixed in your question?

Mr. Schwartz: In June.

Q. (By Mr. Garrett): Did you go to any meetings in San Pedro in May at which either Mr. Zafran or Mr. Kibre were present?

Mr. Schwartz: I object to this line of questioning, your Honor, at this time as to any meeting which took place after May 20th about which this witness has testified.

The Court: I think the witness may answer the question and then counsel can find out whether it is before or after the 20th. The objection is overruled. [608]

Q. (By Mr. Garrett): That was as to May, Mr. Vitalich, did you go to any meetings at which any of the members of the union were present except the ones you told us about where Zafran presented the contract?

* * *

The Witness: Yes, I did.

Q. (By Mr. Garrett): Were they before or after May 20th? A. After May 20th.

(Testimony of Vincent Vitalich.)

Q. But before June 1st, is that right?

A. Yes.

Q. Between May 20th and June 1st?

A. Yes, sir.

Q. How many such meetings did you attend,—just tell me the number.

Mr. Schwartz: Same objection, if the court please.

The Court: Sustained.

Q. (By Mr. Garrett): Did you have any meetings in May, 1946, with any members or representatives of the antitrust Division? [609]

Mr. Schwartz: Same objection, if the court please, as outside the scope of the direct examination, tending to limit this proceeding.

The Court: Overruled. I think that goes more to the question of the witness' interest or bias.

* * *

The Witness: Not that I can recall.

* * *

Q. (By Mr. Garrett): Does that mean that you may have had some or that——

A. No, we didn't have.

Q. You know definitely you didn't have any meetings with such people in May, is that right?

A. Right. [610]

* * *

Q. (By Mr. Garrett): Let's put it this way: Did you have any meetings or conversation after May, 1946, with any representatives of the government?

(Testimony of Vincent Vitalich.)

The Court: Concerning this matter?

Mr. Garrett: Yes, concerning this general matter. A. After May 30th?

Q. Yes. A. Yes.

Q. And when was the first of those meetings?

A. The first conversation, I don't remember when it was, exactly, what day it was, I don't remember.

Q. Was it a personal conversation or by telephone? A. Personal.

Q. Was it while your plant was still closed down or afterwards?

A. When the plant was closed down.

Q. That would put it somewhere in the month of June, is that right?

A. Sometime in June. [611]

Q. And where did that meeting take place, or conversation?

Mr. Schwartz: May the record show that we object to this whole line of questioning as to any meetings which took place in June of 1946, as outside the scope of the direct examination, and as not being material to the issues in this case:

The Court: Overruled.

* * *

The Witness: Upstairs on the sixteenth floor, I believe it was, of this building.

The Court: That was in June of 1946?

The Witness: Yes, sir.

Mr. Garrett: May I have Sherman's A, please?

(The document was handed to counsel.)

(Testimony of Vincent Vitalich.)

Q. (By Mr. Garrett): Do you know about these letters that were prepared by Mr. Margolis and Attorney Ekdale?

Mr. Schwartz: I object to that, if the court please, on the ground it is outside the scope of the direct examination, and I ask the court to limit the cross examination.

The Court: The objection is sustained. [612]

Q. (By Mr. Garrett): Did you have any of the other fish wholesalers with you in this meeting that you have mentioned on the 16th floor of this building in June? A. Yes.

Q. Did you have Mr. Ekdale with you?

A. Yes.

Q. Now, I suppose among the dealers who were with you was Mr. Ross, is that right?

A. I believe he was.

* * *

Q. (By Mr. Garrett): Were you a member of the committee at that time? [613]

A. What committee?

Q. The committee of fish wholesalers from the wharf? A. Yes, I was.

Q. And the other members of that committee were,—G. Cigliano, was he a member?

Mr. Schwartz: I object to this whole line of testimony as outside the scope of the direct examination.

The Court: Overruled.

Q. (By Mr. Garrett): Cigliano, was he a member? A. Member of what?

(Testimony of Vincent Vitalich.)

Q. The committee that you were on?

A. Yes.

* * *

Q. (By Mr. Garrett): Was there a member of the committee whose name began with "S," and was something like Silenta? A. Yes.

Q. And then there was G. Cigliano? [614]

A. Yes.

Q. This one here is,—the initial is "J" and it is D-u—is there anyone on that committee whose first initial was "J" and whose last name began with "D-u?"

A. It might be Da Messa.

Q. Was he on the committee? A. Yes.

Q. J. Da Messa? A. Yes.

* * *

Q. These committee members, these persons you have identified as being on the committee with you, Silenta, Da Messa, Cigliano, and Ross, were they all with you at that meeting on the 16th floor that you have testified about?

A. I believe they were.

Q. Together with Ekdale? A. Yes, sir.

Q. Any other fish wholesalers from the wharf besides [615] the ones I have mentioned?

A. I believe the whole group of wholesalers was together.

Q. They were all there, were they?

A. Yes.

Q. That is 10 or 11 all together, including yourself? A. Yes, sir. [616]

* * *

(Testimony of Vincent Vitalich.)

Q. Will you tell me, Mr. Vitalich, how the committee which you were on with Mr. Ross and Mr. Salenta and Mr. Di Massi and Mr. Cagliano, will you tell me how that committee was selected?

Mr. Schwartz: I object to that, if the Court please, as not material to the issues in this case, nor is it proper on cross examination in pursuing this line of questioning further.

The Court: Objection sustained.

Q. (By Mr. Garrett): Can you tell me whether in the month of June you were a member of the fish association? [619]

Mr. Schwartz: If the Court please, I object to the question first, as to the form. There has been no evidence that there is a fish association.

The Court: Sustained. [620]

* * *

Q. Do you have any sales that you made through any connection in Los Angeles which don't show on your books, the ones you keep in San Pedro?

A. No, sir.

Mr. Garrett: No further questions.

The Court: Cross examination on behalf of the remaining defendants?

Mr. Anderson: Yes, your Honor.

The first thing we should like to do, may it please the Court, is move to strike the testimony of Mr. Vitalich regarding the alleged sales of fish outside of the state of California for the year 1945, on the basis that it is too remote to any issues involved in this case, and further based on the premises that

(Testimony of Vincent Vitalich.)

the witness testified that in 1946 he did not know—that is the time involved in these proceedings—whether or not during that period he had sold or shipped any outside of the state of California.

Mr. Schwartz: If the Court please, I object to that.

The Court: He didn't give any testimony about 1946 so there isn't anything to strike there. 1945 is not too remote. The motion is denied.

Cross-Examination

By Mr. Anderson:

Q. Mr. Vitalich, as I recall your testimony, you have been in the fish business for a good many years? [621]

A. That is right.

Q. Have you ever been a fisherman?

A. No, sir.

Q. You have owned boats in the past?

A. I have shared in two boats.

Q. A share in two boats?

A. I had a share in two boats.

Q. Did those boats operate out of the port of San Pedro?

A. Yes, sir, sometimes they operated at Santa Monica.

Q. But in this general area, is that correct?

A. That is right.

Q. At that time did you have your present place of business at San Pedro?

A. Yes, I did.

* * *

(Testimony of Vincent Vitalich.)

Q. When was it that you owned the boats, to satisfy Mr. Schwartz?

A. One boat I shared in, I think it was in '39, and the other one I think around about '40 or '41.

Q. Did you own substantially a half interest in each [622] vessel?

A. In one of them I did own half, in the other—well, both was 50 per cent owned by me.

The Court: Both of them?

The Witness: Yes, sir.

Q. (By Mr. Anderson): How long did you have this interest in those boats?

A. How long did I have the boats?

Q. How long did you retain your interest in those boats?

A. The first one was about, I presume, a year and the second one would be probably a year and a half?

Q. What was the size of the crew of each vessel?

A. The first one I think was two.

Q. And the other one?

A. And the other one I think was two.

Q. Two besides the master?

A. No, my partner he was the master on one of them for a while.

Q. In other words, a master and then a crew of two?

A. A crew of one, or two sometimes.

Q. One or two depending on what fish you went for, is that correct?

A. What?

Q. You say sometimes there would be a crew of two [623] besides the captain?

A. Yes, sometimes one and sometimes two.

(Testimony of Vincent Vitalich.)

Q. I assume the catch by those boats was delivered to your place of business?

A. It was not.

Q. Were they sold on the market generally?

A. Yes, sir.

Q. Now in 1944 did you own the boat the Lee B?

A. It was 1944 I believe we still had it. I believe I had it. I am not quite sure. I don't remember when I sold it.

Q. Was the Lee B one of the boats that you mentioned? A. Yes, sir.

Q. When did you sell the Lee B? You mentioned that you had one in '39 and one in '40. When did you sell the Lee B?

A. I don't remember when I sold that.

Q. Can you give me an approximation?

A. I couldn't say.

Q. Was it '43?

A. I don't remember?

Q. '44?

A. I think it was prior to '44, if I am not mistaken.

Q. Somewhere between '40 and '45?

A. Yes. [624]

Q. You are sure you don't own it now?

A. No, sir.

The Court: You mean you are not sure?

The Witness: I am sure that I am not owning it now. [625]

* * *

(Testimony of Vincent Vitalich.)

Q. So you became generally familiar with the methods used in catching fish, didn't you?

A. I don't know nothing about fishing.

Q. You don't know anything about it?

A. No, sir.

Q. You, of course, are well acquainted with all of the fish dealers on the pier there at San Pedro, aren't you?

A. I am well acquainted with them; yes.

Q. There are about a dozen, are there, including you?

A. Yes.

Q. And during the time that you had this association, this first association which was ordered to cease operations by the Federal Trades Commission, you became very intimately acquainted with all of the owners of those various businesses, did you not?

The Witness: Yes, I know them all well.

Q. (By Mr. Anderson): You still know them all very well, don't you?

A. Some of them are out of the business.

Q. Well, those who are presently engaged in the business there, you know very well, don't you?

A. Yes. [627]

Q. They are friends of yours?

Mr. Schwartz: If the court please, I object to any further questioning along this line.

The Court: Objection sustained. Who is whose friend here, I don't think makes any difference.

(Testimony of Vincent Vitalich.)

Mr. Anderson: I don't think it makes a great deal of difference either.

The Court. Let's go on, then.

* * *

Q. (By Mr. Anderson): During this period of time, and before that association was disbanded, you members of the association met from time to time at lunches or dinners and discussed the problems of the fish industry, did you not?

Mr. Schwartz: I object to that, if the court please, as not material to the issues of this case.

The Court: I think so, and I think it is pretty remote too. The association was dissolved, according to the testimony, in 1939.

Mr. Anderson: The organization was dissolved, may it please the court, according to the testimony.

The Court: That is the only thing I have to go on here.

Mr. Anderson: I quoted the words "according to testimony." We don't believe it is dissolved.

Mr. Schwartz: I object to that statement by counsel and ask that the jury be instructed——

The Court: Yes, the jury is instructed to disregard it. Objection sustained.

* * *

Q. (By Mr. Anderson): After 1939 when that association was dissolved, did you join the new organization, the Western Fish Institute, or whatever the name of that second organization was?

A. I think I was a member of Western Seafood Institution after the O. P. A. got in existence.

(Testimony of Vincent Vitalich.)

Q. As I understand it, the old association was dissolved before 1939 or 1940 when you were served with the cease and desist order, is that correct?

A. That's right.

Q. And then you joined this new institute shortly thereafter, isn't that correct?

Mr. Schwartz: If the court please, he just stated he joined it when O. P. A. came into existence, and I object to counsel testifying. [629]

Q. (By Mr. Andersen): Can you give me the year when you joined the institute?

A. I don't remember.

Q. Do you know if the organization was formed at the time the O. P. A. came into existence or whether it had been in existence prior to that time?

A. I do not know whether it was in existence or not.

Q. Would you tell us who directed it to your attention?

A. I don't remember who it was. I think it was Mr. Lawton.

Q. Mr. Lawton was the man who acted as sort of a manager or agent of the institute, is that correct?

Mr. Schwartz: If the court please, I object to any further questions about the Western Seaford Institute. Whatever purpose they have apparently has been indicated by Mr. Anderson as possibly going to their defense in this case, and we have already argued that subject before the court, and the court sustained it.

(Testimony of Vincent Vitalich.)

The Court: I don't see how it is within the scope of the direct examination here. The only possible ground of admissibility would be to show bias or prejudice on the part of this witness.

Mr. Anderson: It also goes to impeachment, as I view it.

The Court: I said bias or prejudice. Are you laying [630] a foundation for impeachment?

Mr. Anderson: In part, yes, I am endeavoring to lay a foundation for it, your Honor. [631]

The Court: Then the question is not in the proper form.

* * *

The Court: The objection will be sustained. Let's get on.

* * *

Q. (By Mr. Anderson): You mentioned Mr. Lawton—Mr. Lawton was an officer of this organization, this Western Food Institute, is that correct?

Mr. Schwartz: If the court please, I thought we had just gone into that.

The Court: Are you objecting?

Mr. Schwartz: Yes, sir.

Mr. Anderson: This is preliminary, your Honor; purely preliminary.

The Court: The objection is sustained. [632]

* * *

The Court: Did Mr. Lawton ever represent you, your firm, in any negotiations with Local 36?

The Witness: Not that I can remember.

Q. (By Mr. Anderson): Do you have any records in your office which might refresh your recollection on the question?

(Testimony of Vincent Vitalich.)

A. When the O. P. A. went out I threw all my records away.

Q. Do you know of your own knowledge if Mr. Lawton ever represented any of the other fishermen on your pier there in any negotiations with the fishermen's union mentioned?

Mr. Schwartz: I object to that, if the court please.

The Court: Objection sustained:

Q. (By Mr. Anderson): After the dissolution of the association you and your fellow dealers on the wharf there also met from time to time, did you not, to discuss fishing in general.

Mr. Schwartz: I object to that, if the court please on the ground it is immaterial to the issues in this case.

The Court: Objection sustained. [634]

* * *

Q. (By Mr. Anderson): During the first five months of 1946, that is, from January through May, did you meet with the other 11 or 12 dealers on the dock there to discuss fish prices or fish negotiations with the union? [635]

* * *

A. I don't remember.

* * *

Mr. Schwartz: Just a minute. If the court please, I would like to ask—I think we are faced here with a language difficulty. I think your Honor's previous examination has pertinency.

The Court: I think that is possibly so.

When you say you don't remember, do you mean

(Testimony of Vincent Vitalich.)

you would have had meetings like that and not have remembered them?

The Witness: No, I don't remember having any meetings. [636]

The Court: In other words, you remember that you did not have any meetings, is that what you mean?

The Witness: That's right.

The Court: All right.

Q. (By Mr. Anderson): You understand everything I say, don't you, Mr. Vitalich?

A. I understand—not quite, sometimes. That is why I ask to repeat the questions.

Q. Any time you don't understand what I say, or anybody else says, I wish you would tell the court. The court wants to see that you understand all these questions before you answer them.

Then on May 20th of last year was that the first time that you had any idea at all that a contract was going to be offered you by the union?

A. Yes, as far as I can remember. [637]

* * *

Q. Do you know if on May 20th, or the same day of this contract, the day that Government's Exhibit No. 3 was presented to you, if that contract was presented to other dealers on the dock there?

A. No, I do not know if it was presented to the other dealers.

Q. Well, shortly after you received that contract you inquired of the other dealers as to whether or not they had received prepared contracts, didn't you?

(Testimony of Vincent Vitalich.)

A. I don't know if I asked them the same day or the next day or a couple of days later. I don't know.

Q. Right about that time you got in touch with the other dealers?

A. Within, I would say, two or three days.

Q. Within two or three days, and mentioned to them that this contract had been received by you, and that all of you ought to have a meeting about it, is that correct?

* * *

The Witness: I think the group of fishermen [647] called the meeting and asked us to meet with them.

Q. (By Mr. Anderson): Is that the way it occurred?

A. I believe it did.

Q. Did you fish dealers have a meeting yourselves?

A. Not before that?

Q. Did you have a meeting after that?

A. Yes.

Q. That is, all of you fish dealers had a meeting after?

A. Yes.

Q. Do you recall when the first meeting was held?

A. The first fish dealers' meeting?

Q. Yes. Was it within two or three days after receiving Government's Exhibit 3, the contract?

A. I think it was the next day after we met with the fishermen we had a meeting, fish dealers' meeting.

(Testimony of Vincent Vitalich.)

Q. The next day after you had the meeting with the fishermen?

A. Right.

Q. Who was at the meeting with the fishermen?

A. I was there. [648]

* * *

Q. Just in the interest of time, were most or all of the fish dealers there, or represented?

A. I would say about half of them.

Q. Was Mr. Zafran there from the Fishermen's Union?

A. I believe he was.

Q. And somebody else there from the Fishermen's Union?

A. George Knowlton.

* * *

Q. Would that be about the 29th of May? [649]

A. No. We had a meeting of our fish dealers about the day after we met with the fishermen.

Q. First you met with the fishermen and then you had your own meeting?

A. That is right.

Q. You had the meeting with the fishermen a couple of days after you received the contract, is that correct?

A. Something like that.

Q. Well, now, when Mr. Zafran called upon you and gave you the contract, how long was he in your place of business?

A. He was at the door.

(Testimony of Vincent Vitalich.)

Q. How long was he there?

A. For just a few minutes.

Q. Was he there about half an hour discussing this contract with you?

A. No, sir.

Q. You had never heard of that contract before that time?

A. No, sir.

Q. You had no indication at all that the union wanted to enter into collective bargaining contracts with you?

A. No, sir.

* * *

Q. Did you read the contract while Mr. Zafran was there? A. No, sir.

Q. Did you discuss any terms or provisions of the contract with him while he was there?

A. I asked him what it was all about, and he says, we want a contract, you should sign a contract to fix the price for the fish.

Q. Didn't he tell you that the fishermen simply didn't want to go out to fish unless they knew the price that they would get before they went out?

A. At that time he didn't say that. He said, "Take the contract and read it and sign it."

Q. Do you mean to tell me that he just came up and handed you this contract and said, "Read it and sign it?"

A. No, he told me it was—the union wanted to have a minimum price for the fish.

(Testimony of Vincent Vitalich.)

Q. Before they went out?

A. He said that the union wanted a signed contract, agreement, to the effect that they will not go out unless they get a minimum price of so much for the fish.

Q. For so much money for various types of fish?

A. Yes; minimum price.

Q. That is true, is it? A. Yes, sir.

Q. And did you discuss with him about when you would give him an answer as to whether you would sign?

A. I didn't discuss it to him. I told him I would read it over.

Q. Did you tell him that you would get in touch with him, or did he ask you to get in touch with him, or did you ask him to get in touch with you?

A. I don't remember if he told me or I told him I would get in touch with him. I think he said that he will be back to pick up the contract.

Q. Be back to what?

A. To pick up the signed contract.

Q. To pick up the signed contract?

A. Yes. [652]

* * *

Q. (By Mr. Anderson): There are about 200 or more boats that bring fish in there, aren't there?

A. I don't know exactly how many there are.

Q. I don't care about exactly. I said about 200?

A. Probably 150, 200.

* * *

(Testimony of Vincent Vitalich.)

Q. That is close enough. And all of those boats when they catch fish, they bring them in and tie up at various [653] places along the dock there, and, of course, want to sell their fish to one or more of the dealers, isn't that correct?

A. That's right.

Q. You, of course, always keep yourself advised as to the price of the fish, don't you?

A. Keep myself advised?

Q. Yes. A. Yes, I do.

Q. You keep yourself advised of what you called on your direct examination the market price of the various types of fish, isn't that correct?

A. That is right.

Q. So when boats come in with fish to sell, you of course know what the market price is, don't you?

A. No, I don't right away.

Q. You don't right away?

A. Sometimes I go ask the fishermen how much fish he has got.

Q. Sometimes you ask the fisherman, or, as you testified on direct examination, sometimes you telephone all over to determine——

A. First I ask the fishermen what fish they got and what kind of fish they got. [654]

Q. And then you telephone all over to determine what the market price is?

A. No, I don't—I try to find out what the market price is, how much fish comes into other ports, if any.

(Testimony of Vincent Vitalich.)

Q. When you try to find out the fish that goes into another port, or the market price at another port, who do you telephone,—the dealers in the other ports?

A. I call up, say, Los Angeles, and see if there is any boats of barracuda coming in, would they be interested in any barracuda.

Q. You mentioned that sometimes fish come into another port; what do you mean by another port?

A. Say, San Diego, Santa Barbara, we call up the customers and ordinarily a customer will say, "I got enough barracuda today," or I say, "Where from?" And they say, "San Diego." And they even tell us the price they pay.

Q. Do you find out the price that was paid for the fish at the other ports, do you?

A. Not necessarily what they pay in the other ports. What the customer paid to the dealer from other ports. [655]

* * *

Q. I say you are interested in two things, generally, I assume; one is the price that the customers pay, that is, the retail markets pay for the fish, and you are interested in what the dealers pay the fishermen for the various species of fish, isn't that true?

A. In different ports, yes.

Q. And you ascertain those prices, do you not, by talking to, as you mentioned, the places uptown, the shops uptown, and also you find out what the price is by telephoning the other ports, too, don't you?

A. That's right.

(Testimony of Vincent Vitalich.)

Q. You talk over the telephone, then, to the people uptown, the shops uptown, to find out what they pay, you phone, we will say, San Diego, or some other fishing ports in this vicinity and find out what the price is there,—that is correct, is it?

A. Yes, I find out if there is any fish in any other port and I find out what is the market price at Los Angeles or elsewhere.

The Court: By market price what do you mean,—the price that the retailer here pays for fish?

The Witness: Retailer or wholesaler.

The Court: Or wholesaler? [656]

The Witness: Yes.

The Court: Pays for fish from fishermen or from the dealer?

The Witness: From the dealer.

The Court: The market price that the dealer gets, is that what you mean, or the market price that the fishermen gets?

The Witness: The market price the dealer gets.

Q. (By Mr. Anderson): By the market price that the dealer gets, you mean the resale price—strike that, please. Do you consider yourself a dealer? A. Yes.

Q. And do you also consider yourself a wholesaler? A. Wholesale fish dealer.

Q. And the other people on this dock in San Pedro are in the same position as you are, that is, wholesale fish dealer? A. That's right.

Q. They have wholesale fish dealers at San Diego also in these other ports around here?

A. I believe they have.

(Testimony of Vincent Vitalich.)

Q. You phone San Diego occasionally to find out what the wholesale dealer price is, don't you?

A. I would call up San Diego and ask them if they need any barracuda, as an ordinary customer.

Q. Are you talking about calling another dealer, that is, another wholesale dealer?

A. Because we do buy fish from San Diego and we do sell fish in San Diego; and also in Santa Barbara, and we also buy fish from Santa Monica.

Q. Well, let's assume that a load of fish comes into San Pedro and the boat ties up somewhere near you and you and the other dealers want to buy some fish, all of you offer about the same price for the fish, don't you?

A. No, we don't.

Q. Do you all offer different prices; do you, for the same fish?

A. If a boat comes into San Pedro, as I stated before, I walk up to the boat and wait until he lands, the captain comes off on the wharf, I ask him what fish has he got, and he tells me what he has got and how much he has got, and he will ask me the price. And if I know it already that there is no fish some place else, I would say, "I will take a ton of barracuda, two ton of barracuda and pay you," say, for instance, "20 cents, 22," because I know that I can sell it because there is no fish in another port to my knowledge. Then he will go down the line and find out if he can get more money for his fish. Sometimes there are two or three of us right at the present time when I offer him a price.

Q. Sometimes what? [658]

(Testimony of Vincent Vitalich.)

A. There will be two or three dealers present right by the boat, and when the captain asks what is the price of barracuda, I will say 22 cents, and probably there will be two or three dealers right there listening to me offer him the price.

Q. 22 cents?

A. Yes. Maybe 22, maybe 21, whatever it happens to be.

Q. Of course, the price to a certain extent depends upon the amount bought, too, doesn't it?

A. Yes.

* * *

Q. (By Mr. Anderson): What I am trying to say is this: If a boat comes in and has a lot of barracuda, say, 10 or 12 boxes, if he were to sell the 10 or 12 boxes, say, to your company, for instance, he would probably get less money, that is on the poundage basis, for the 12 boxes, than he would if he were to sell you, say, just one box? Do you understand what I say now? [659]

A. If a fisherman comes in and brings in 10 boxes of barracuda, if he sells it all to me, if I offer him satisfactory price then he doesn't care to sell somebody else, he will sell all to me. I have boat that sell me fish whole load, maybe a ton, maybe two ten, a thousand pounds; I have some men in this room sold me their entire catch from day to day.

Q. What I mean, Mr. Vitalich, is it customary when you buy a large quantity of fish to get a slightly better or lesser price than if you only bought, say, one box out of 12 or 15?

(Testimony of Vincent Vitalich.)

A. Not necessarily. You get cheaper—demand and supply controls your market.

Q. In other words, if a man comes in with 15 boxes of—say, two tons, as you mentioned, of barracuda, and you say there is no demand, if he wants, we will say, 24 cents,—that is a figure that has been mentioned here before—you might say, “I will give you 20 cents,” or “I will give you 18 cents,” or whatever price you offer, is that true?

A. Whatever price I think is right for me so I can sell it.

Q. That is in the light of how much fish you have on storage, in the light of how much fish you have in your plant, in the light of how much fish you might be able to sell, then you offer him a price in relation to what you think you can do with it, is that true? [660]

A. That's right.

* * *

Q. (By Mr. Anderson): Let's take, for instance, the precise example that he talked about on direct examination, your Honor,—I believe it was Mexican halibut that was mentioned,—that halibut was originally offered to you, say, by Mr. Zafran at, I believe, 23 cents a pound, is that correct? A. 24 cents a pound.

Q. 24 cents a pound. And you testified that it eventually sold at 15 cents a pound?

A. Right. [662]

Q. In other words, when it was first offered to you?

A. I understood it was sold for 15 cents a pound, I said.

(Testimony of Vincent Vitalich.)

Q. Yes, that is what you said, what you testified to. In other words, the fish was originally offered to you at 24 cents a pound, you wouldn't pay 24 cents a pound, is that correct?

A. That is right.

Q. Then the price went down and down until you understood it sold for 15 cents a pound, is that correct?

A. Right.

Q. That happens quite frequently in this business, doesn't it?

A. No, it don't.

Q. Is that a very infrequent occurrence?

A. Yes, a big drop of price like that comes occasionally. As I stated before, whenever we get fish up north like filet of sole, filet of rock cod, up from Seattle, Eureka, Astoria, all that fish is shipped to the Los Angeles market, San Francisco market, San Jose and Sacramento—all over California and other places in the United States, and that fish competes with our fish in San Pedro. [663]

* * *

Q. You import some of it too?

A. Very little.

Q. When the fisherman comes in with his load of fish, he doesn't know what price he is going to get for it, does he?

A. No, I don't think he does.

Q. And he doesn't know what price he is going to get for the fish before he goes out, does he?

A. No, sir, he don't.

(Testimony of Vincent Vitalich.)

Q. And that has been the custom in the fishing business at San Pedro ever since you have been in business there, hasn't it?

A. I believe it has been.

Q. From how many boats do you customarily buy your fish, from just a few of these 150 to 200 or from all of them?

A. I will say approximately about 75.

Q. From time to time you buy fish from 75 boats?

A. I will say approximately 75.

Q. Now do most of these boats have a crew of three to six men?

A. Well, there is some they got 10 men, 11 men.

Q. Those are the boats that come from San Diego, aren't they?

A. No. [664]

* * *

Q. (By Mr. Andersen): What I am getting at is that these boats that have more than six men in the crew, they are usually not considered a part of the small boat fleet, are they, because they are large boats?

A. I wouldn't say.

The Court: Do you buy fish from them?

The Witness: Yes, sir.

The Court: In the fresh fish market?

The Witness: Yes, sir. We buy fish from small boats [666] and big boats.

Q. (By Mr. Andersen): From small boats and big boats?

A. From small fleet and big fleet.

Q. Is the small boat fleet—we will put it this way—the smaller boats spend more of their time—withdraw that.

(Testimony of Vincent Vitalich.)

Do the smaller boats spend more of their time fishing for the fresh market than these boats which have 11-men crews that you have mentioned?

A. Well, we have some large boats that fish for us all year around.

Q. All the year 'round?

A. They bring fish to the market all year 'round, either here or San Diego or wherever they happen to be.

Q. Then getting back to the prices, the fisherman when he goes out doesn't know what the price will be, he doesn't know what the price will be when he comes in with his catch, and you determine what the price is in the market and then you go down and offer him what you think the market price is, is that generally correct?

A. Generally it is handled as sort of an auction.

* * *

Q. You say there is an auction?

A. I say it is sort of an auction like on the buying system.

Q. Well, Mr. Vitalich, when a boat comes in and you and two or three others go down there, and we will say there is a normal supply of fish, do you and the two or three other dealers who go down there bid against each other to get the price up?

A. If fish is scarce.

Q. I say, there is a normal supply of fish?

A. If there is a lot of fish, more than we can use at that particular price—

(Testimony of Vincent Vitalich.)

Q. At what particular price?

A. That the fishermen ask. It might be 18 cents, 20 cents, whatever he happens to ask for it.

Q. You always offer the same price, don't you?

A. No, we don't. [668]

* * *

Q. When is the last time you purchased a large amount of fish?

A. The last time a large amount of fish, substantial I call it, I purchased four ton tuna, my company purchased four ton tuna.

Q. Did you purchase that from this——

A. From one of the large boats.

Q. Is that a regular tuna boat?

A. Yes, sir.

Q. Let's talk about the last time you purchased, we will say, a large amount of barracuda?

Mr. Schwartz: If the Court please, I will object unless a date is fixed here.

The Court: I cannot see the materiality of it.

Mr. Andersen: I simply wanted to get into the method of pricing, your Honor.

The Court: I think you have covered that pretty well, counsel, in your cross-examination of this witness, and any further examination of it would serve no purpose at all in illuminating the jury as to the issues that are involved in this case.

Mr. Andersen: This was all done on direct examination, your Honor.

The Court: Counsel, you have heard my ruling.

Mr. Andersen: Yes, your Honor.

(Testimony of Vincent Vitalich.)

The Court: Everything has been exhausted from this witness on the matter of his method of doing business until the point where I think that you should pass on to some other feature of your cross-examination, if you have it.

Mr. Andersen: I have one other aspect of that that I want to go into, not at great length, your Honor.

Q. Did you during the fishing season spend the bulk of the time in your place of business there?

A. During the fishing season?

Q. Yes, during the time your plant is operating.

A. Yes, I spent most of my time there, every day practically.

The Court: When is the fishing season?

The Witness: What kind of fishing season? Fishing season is all around the year.

Q. (By Mr. Andersen): Say during the months of May and June. A. Yes.

Q. In other words, you work at your place like we do at ours, is that correct, you spend all of your time at it?

A. Not all the time. I go out for vacations sometimes.

Q. Well, then, when you go to your place down there on the dock you learn what the other fish dealers are paying for the fish, don't you? [670]

Mr. Schwartz: If the Court please, we have been all over this before.

The Court: Yes, I think so. Objection sustained. Repetitious and going over the same ground again.

(Testimony of Vincent Vitalich.)

Mr. Andersen: All right, your Honor.

Q. You mentioned that you have a storage capacity there of 15 to 20 tons, is that correct?

A. Icebox.

Q. I beg your pardon?

A. It is an icebox, storage capacity.

Q. You also mentioned that you had other storage facilities at the Union Ice Company?

A. I have not. It belongs to the Union Ice & Storage Company. I store my fish there.

Q. Are those facilities unlimited, I mean, can you store any amount that you wish to there?

A. No, you can't.

Q. Up to what amount have you stored there from time to time—let me strike that and put it this way:

Has there been any limitation on the number of tons that you could store there?

A. Yes, there has been.

Q. What is the largest number of tons of fish you have been permitted to store there?

A. Well, there is no such a restriction on what you [671] want to store there from the Union Ice and Storage Company if they have available facilities.

Q. Have you always been able to store there such as you wished? A. No, sir.

Q. What is the largest number of tonnage you have ever stored there? A. Just when?

Q. Any time in the last five years.

A. I will say approximately 40,000 pounds.

(Testimony of Vincent Vitalich.)

The Court: At one time?

The Witness: No, different varieites of fish. If I put the fish in storage, maybe I put a thousand pounds in today, or maybe 500 pounds tomorrow, or 10,000 pounds the next day. That would accumulate there probably until a period of two or three months, or four or five months sometimes.

The Court: I don't understand your answer. Counsel asked you the most and you said 40,000 pounds. You have had as much as 40,000 pounds at one time in storage?

The Witness: I have had as much at one time. Not stored at one time.

The Court: Not stored at one time?

The Witness: No.

Q. (By Mr. Andersen): I mean the largest number of tons you have stored [672] there at one time, not that you have put in at one time but the greatest amount of fish you have had in storage at any one time.

A. I presume approximately 10,000 pounds.

Q. Is there any other place where you can store fish in the same manner?

A. That I can store?

Q. Yes, that your firm can store fish in the same manner.

* * *

The Witness: No, I have not. I did store a small amount of fish in the Los Angeles Ice & Storage Company on just occasions.

Q. (By Mr. Andersen): You mentioned that you had some shrimps?

(Testimony of Vincent Vitalich.)

A. In Union Ice & Storage at San Pedro, or Wilmington rather.

Q. You don't purchase shrimps from those boats, do you, that is, the boats of this union?

A. No, sir.

Mr. Andersen: That is all. [673]

The Court: Redirect.

Mr. Schwartz: Just a few questions, your Honor.

Redirect Examination

By Mr. Schwartz:

Q. Mr. Vitalich, you were asked some questions by Mr. Andersen about determining the market price. I would like to clear up this matter about whom you call. Are they brokers or dealers who want to buy your fish, is that what you call for?

A. What do you mean?

Q. When you called up these different places to determine what Mr. Andersen called the market price, I understood that you put in telephone calls to various people in Los Angeles and other ports.

A. That is right.

Q. Is the information that you are seeking, that you are asking concerning whether these people will buy your fish and pay a certain price?

A. No.

Mr. Andersen: I am going to object to that as leading and suggestive.

The Court: Yes, it is leading and suggestive.

(Testimony of Vincent Vitalich.)

Q. (By Mr. Schwartz): What is the information that you try to get when you make these telephone calls?

The Court: Let me ask: Who do you call, your customers? [674]

The Witness: Yes.

The Court: You call other dealers, other wholesale dealers?

The Witness: No, I call my customers.

The Court: All right.

Mr. Schwartz: Thank you. That is all I wanted.

* * *

The Court: The witness may be excused.

(Witness excused.) [676]

* * *

JOHN LOUIS DI MASSA

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: John Louis Di Massa; D-i M-a-s-s-a. [677]

* * *

Direct Examination

By Mr. Schwartz:

Q. What is your business or occupation?

A. I am copartner and manager of the Los Angeles Fish & Oyster Company in San Pedro.

(Testimony of John Louis Di Massa.)

Q. What kind of a business is that?

A. We are in the wholesale fish business, processing of fresh fish.

Q. How long have you been in the wholesale fish business, Mr. Di Massa?

A. I have been actively engaged—I graduated from high school in '35, but I was there four years prior to graduating from high school. I have been the manager since 1939.

Q. Who else is interested in that business with you?

A. There is G. Di Massa, my dad, there is John Joseph Demeglio, a partner, Frank L. Glenn, a partner, Carmen Frank Di Massa, a partner, and Lucile Di Massa, a partner. [678]

Q. What are your duties as the general manager of the L. A. Fish and Oyster Company?

A. Buy fish from the fishermen, buy fish outside from various brokers, price the fish which is to be sold, more or less call the signals for the company.

Q. At the end of each day are you familiar with the purchases made by your company?

A. Yes, sir, I am; we have a complete record of all purchases and sales.

Q. Do you have anything to do with relation to the records or books kept by your company?

A. I check the books of the company.

Q. With relation to the sales made by your company do you know at the end of each day what those sales are?

(Testimony of John Louis Di Massa.)

A. Yes, sir, I do; I go through the sales book at the end of the day, check the prices——

The Court: Do you know that without going through the books, generally?

The Witness: I have a general idea, your Honor. Then I always check the books to see that there is no mistake in regards to the price.

Q. (By Mr. Schwartz): So at the end of each day you generally know where the sales have been made? A. Yes, sir.

Q. Whether they are intrastate or interstate sales? [679] A. Yes.

* * *

Q. (By Mr. Schwartz): With reference to the purchase of fish at San Pedro from the fishermen, will you relate what, if anything, you personally have to do with that?

A. When the fisherman brings in his catch I have an idea what I can pay for it; if I could buy it at that price and make a profit, I buy it; if he wants too much, I just don't buy it.

Q. Where does the negotiation for this sale of fish or purchase of fish take place?

A. Usually on the dock.

Q. Right where the boat is tied up?

A. Where the boat is tied up. Usually when the captain is still at the wheel, while the boat is being tied.

Q. What happens?

(Testimony of John Louis Di Massa.)

A. Well, if he has barracuda—"What do you want for it?" "12 cents." Well, if I think I can make money at 12 cents, I buy it. If it is too high, I don't buy it. That is all there is to it.

Q. Does it happen that at the time the fishermen come [680] in that there are times when there is more than one dealer present?

A. Yes. Especially when it is scarce.

Q. What happens on those occasions?

A. Well, we all make a run, help him tie up the boat and everything else, to buy his catch.

Q. Will you describe the type of negotiation that takes place for the purchase of the fish?

A. Well, he knows the market is scarce, he will ask a high price. He usually gets it when it is scarce, because of the demand for fish.

Mr. Andersen: I move all this be stricken, may it please the court. It is purely speculative. It is a conclusion and opinion of the witness.

* * *

The Court: The portion of the answer where he describes what is in the mind of the boat captain is stricken. [681]

* * *

Q. When there is a boat that comes in, and there are more than two dealers, there are two or more dealers at that boat landing, negotiating for this fish, will you describe the negotiation without stating what is in the mind of the boat captain?

A. Usually he divides it up.

(Testimony of John Louis Di Massa.)

Q. All right. Will you describe the nature and type of bidding that takes place, if any?

A. If he wants 12 cents, we all buy for 12 and he will give each market so much. Some market he will favor, that bought when fish was plentiful, he will give more, and those who didn't help him out he would give less, or maybe none. [682]

Q. When a sale is consummated, whether it be to a group of dealers or to you alone, describe what happens?

A. The fish is brought into the market and weighed on a scale, and a fish and game ticket is made out, sometimes there may be seconds, No. 2 fish we call it, and that is a cheaper price.

The Court: What is a second?

The Witness: The fish may be bruised, your Honor.

The Court: Bruised?

The Witness: When they bring it aboard the boat, or broken. It has to be cut away. There is a loss in the fish. Those are entered on the fish and game ticket. One copy is given to the fisherman, we retain two copies. It is in triplicate; one given to the fisherman, two copies we keep, which the fish and game picks up every two weeks or three weeks, and one we keep on file at all times.

Q. (By Mr. Schwartz): When is the seller of that fish paid for that transaction?

A. Any time—we usually try to make it on a Monday, but if he wants the check then we pay him the check or cash, whatever it may be, whatever is his desire.

(Testimony of John Louis Di Massa.)

The Court: The custom is Monday is settlement day?

The Witness: It is. We try to. It makes it easier on the bookkeeper.

Q. (By Mr. Schwartz): Do any of these fishermen from [683] whom you purchase fish work for the L. A. Fish and Oyster Company as employees? A. No, sir.

Q. Does the L. A. Fish and Oyster Company employ any fishermen who go out on boats and bring back fish?

A. No. As regards to going and catching, no, sir.

Q. Does the L. A. Fish and Oyster Company have an interest in any vessels?

A. No, sir, we haven't.

Q. What interest, if any, does the L. A. Fish and Oyster Company have with regard to fishermen as to whether they may be or may not be employees?

The Court: I don't understand your question.

Q. Well, there was some qualification the witness made, and I am trying to get what that was.

A. The good will the company has towards some fishermen. By that I mean there is a lot of times when there is a lot of fish and the fisherman is stuck with two or three hundred pounds of fish, and we will buy it off of him, knowing that some days the fish is scarce and the fisherman will give us a break and sell us the fish when it is scarce. The only thing I can say between the L. A. Fish and Oyster is good will.

(Testimony of John Louis Di Massa.)

Q. Is there any employer-employee relationship?

A. No, sir. [684]

The Court: Do you ever finance any fisherman for a portion of the lay?

The Witness: Yes.

The Court: The lay is what they call the catch?

The Witness: Towards equipment, for paying their grocery bill or fuel bill.

The Court: You do that?

The Witness: We do if we know the fisherman.

The Court: When you do that, do you thereby have a mortgage on the fish or a right that is superior as a dealer?

The Witness: No, not necessarily, your Honor. That is entirely up to the fishermen. We don't have him sign any note or anything. We feel it a moral obligation. We feel when we give him this \$10 or \$15 he is going to——

The Court: Ten or fifteen?

The Witness: Or twenty, whatever he may ask. Sometimes with lobsters we will give 100 or 200,—we have a pretty good idea that he is going to sell his lobsters to us. That does not bind him to sell to us.

The Court: What is the greatest amount of financing that you do?

The Witness: At one time we gave a fisherman money to buy a boat.

The Court: Once? How long ago was that?

The Witness: '43. [685]

(Testimony of John Louis Di Massa.)

The Court: Ordinarily is it just an advance of money?

The Witness: We went to the bank and we signed the note.

The Court: No. I mean ordinarily.

The Witness: I have lost you.

The Court: You say you give a man \$5 or \$10. Do you go to the bank for that?

The Witness: No, sir; no, sir. He doesn't sign anything. We know the fellow. There is no legal——

The Court: Go ahead.

Q. (By Mr. Schwartz): Do you purchase fish or oyster or other crustaceans from points other than San Pedro? A. Yes, sir.

Q. Where do you make those purchases from?

A. Those are bought through brokers; Seattle, Oregon, Alaska—Alaska is through Seattle; and Mexico, and then New Foundland, that is always through a broker.

Q. What is what?

A. Through a broker, New Foundland, filets, frozen fish.

Q. How is the transportation for those purchases of those fish from those places you have just mentioned handled?

A. From Mexico they come on a refrigerated truck. It is brought to the dock and the broker, if I want to buy 500 pounds he will weigh out 500 pounds in a box and I will [686] bring it to my market. From Seattle and other points, it is usually by

(Testimony of John Louis Di Massa.)

refrigerated truck, it is—we order 300 pounds of ling cod, it comes in two-hundred-pound boxes, it comes by express or refrigerated truck.

Q. That is from Mexico?

A. No. The fish from Mexico comes direct to the dock and then it is divided. But fish we buy from Seattle or Oregon, it comes through railway express or refrigerated truck and it is already ours. It is our fish as soon as it leaves—what I am trying to say is as soon as it leaves the market in Seattle or Oregon it is our fish. What comes from Mexico is not our fish until we get it off the dock.

Q. Mr. Di Massa, of the fish purchases which your company makes in the course of a year, what percentage of those purchases would you say come from points outside of the State of California?

Mr. Garrett: One moment, please, Mr. Di Massa. May I have the witness on voir dire?

The Court: Yes.

Voir Dire Examination

By Mr. Garrett:

Q. Does your copartnership have books?

A. Yes, sir.

Q. What do those books consist of?

Mr. Schwartz: If the court please, I object to any [687] reference to any books.

The Court: Objection sustained.

Q. (By Mr. Garrett): Do those books show the sales that you make in your business?

A. Yes.

(Testimony of John Louis Di Massa.)

Mr. Schwartz: I object to the question, if the court please, and to this general line of questioning relating to the books of this company.

Mr. Gerrett: This is voir dire, if your Honor please.

The Court: Yes, I know it is voir dire. That is the qualification of the witness to answer the question which counsel asked him, which was whether or not he knows how much fish he buys from outside of the State.

I don't think that is material. Objection sustained.

Mr. Garrett: If your Honor please, do you mean you are are not going to allow me to establish the fact that he has books?

The Court: Here is the general manager of this business; he testifies he keeps track of the sales and business and sells the fish, and calls the signals. Counsel has asked him what percentage of fish.

Mr. Garrett: If your Honor please——

The Court: That goes to the weight of his testimony, rather than his ability to answer the question.

Mr. Garrett: If your Honor please, I am in a position of having to make a record here, and it is necessary for me to bring out the fact that this man has books which give exactly the information he is now asked to give from memory in order to give any effect to my objection that what is being called for is not the best evidence. That is all I wanted to do. I know what your Honor's rulings are

(Testimony of John Louis Di Massa.)

going to be, but the record ought to be intelligible.

The Court: I think the record is intelligible up to now. You can cross-examine him on it. I think it goes more to the weight of his testimony, rather than to his ability to answer this question. The objection is sustained. Proceed.

Mr. Garrett: I will ask the rest of the foundation questions, for I feel that I must.

Q. (By Mr. Garrett): What is the name of your bookkeeper?

Mr. Schwartz: Same objection.

The Court: Same ruling.

Q. (By Mr. Garrett): What does your bookkeeper do?

Mr. Schwartz: Same objection.

The Court: Same ruling.

Q. (By Mr. Garrett): Are your books here in this building?

Mr. Schwartz: Same objection.

The Court: Same ruling.

Q. (By Mr. Garrett): Do your books show the names of the [689] persons whom you purchase fish from?

Mr. Schwartz: Same objection.

The Court: Same ruling.

Q. (By Mr. Garrett): Do they show the location of those persons?

Mr. Schwartz: Same objection.

Q. (By Mr. Garrett): Do they show the amount of the purchases by customers?

(Testimony of John Louis Di Massa.)

Mr. Schwartz: Same objection.

Q. (By Mr. Garrett): Do they show the names of the persons who you sell fish to?

Mr. Schwartz: Same objection.

Q. (By Mr. Garrett): And do they show the names and locations of the persons you sell fish to?

Mr. Schwartz: The same objection.

Q. (By Mr. Garrett): Is that true of both shipments inside of the State of California and shipments to points outside of the State of California?

Mr. Schwartz: Same objection.

The Court: Object sustained.

Mr. Garrett: I object to the question as calling for hearsay and not the best evidence. [690]

* * *

Mr. Garrett: If your Honor please, it is called to my attention that rulings by your Honor are probably not in the record as to all the questions I asked.

The Court: You didn't wait for them.

Mr. Garrett: I presume that I didn't. Will I have to go back and do it over again, or may the record show that you have sustained the objection?

The Court: If you feel that is the only way for you to make your record. But the objections were sustained to that line of questioning.

Mr. Garrett: Thank you, your Honor.

The Court: You may answer the questions now. Do you remember it? Read it.

(Testimony of John Louis Di Massa.)

(The question referred to was reread by the reporter as follows:

“Q. Mr. Di Massa, of the fish purchases which your company makes in the course of a year, what percentage of those purchases would you say comes from points outside of the State of California?”)

Mr. Garrett: I want to make a further objection, that no proper foundation is laid, and that the question by its [691] very wording calls for guessing and speculation on the part of this witness.

Mr. Andersen: Particularly to time, your Honor.

The Court: I think that, perhaps, a better foundation could be laid, as well as time.

Mr. Schwartz: What was the last?

The Court: As well as time. There is no time fixed in your question.

Direct Examination

(Resumed)

By Mr. Schwartz:

Q. Mr. Di Massa, were you at the L. A. Fish and Oyster Company in your capacity as general manager for the year 1945? A. Yes, sir.

Q. 1946? A. Yes, sir.

Q. And during those two years do you know, as general manager of the company, the volume of business done by your company in fish purchases?

Mr. Andersen: May it please the court, I want

(Testimony of John Louis Di Massa.)

to make a further objection. The objection. The year 1945, as we see it, is completely immaterial. So far as we know these people were all doing business with each other during the year 1945.

Mr. Schwartz: I didn't get the last statement. As far as we know what? [692]

Mr. Andersen: So far as we know the people were doing business with each other in 1945.

The Court: What people?

Mr. Andersen: He was doing his business completely uninterrupted in 1945. The complaint here is an interference in 1946.

The Court: It says May, 1946, and sometime prior thereto.

This is all material as it goes to the alleged and asserted interruption in the free flow of fish to the market. So 1945 is not too remote.

Mr. Andersen: May it please the court, the indictment limits the time. It doesn't go into 1945 at all, may it please the court.

The Court: Beginning sometime prior to May, 1946, the exact date being unknown to the Grand Jury.

The objection is overruled. Answer the question.

Mr. Garrett: A further objection: no proper foundation, your Honor.

The Court: Objection overruled. That is a foundation question that he has asked. He just asked him now if he is familiar with the volume of fish. [693]

(Testimony of John Louis Di Massa.)

Mr. Garrett: At the risk of appearing to argue before the jury, I want to say my objection to the question is it doesn't contain the necessary foundation element in that it doesn't show on what basis or from what sources he knows.

The Court: Objection overruled. Read the question, the last unanswered question.

(The last question was read by the reporter.)

Q. (By Mr. Schwartz): That is 1945 and 1946?

The Court: Answer yes or no.

The Witness: In money, about \$200,000.

The Court: Do not answer the question, answer it yes or no first.

The Witness: Oh, yes, sir.

The Court: Do not say how much, just if you know.

The Witness: Excuse me. Yes, sir.

Q. (By Mr. Schwartz): What is the volume of business approximately that was done by your company for the year 1945 in fish purchases total inside and outside of California?

Mr. Garrett: Same objection.

The Court: Overruled.

The Witness: \$200,000.

Q. (By Mr. Schwartz): What was the volume approximately in 1946?

Mr. Garrett: Same objection.

The Court: Same ruling.

Mr. Garrett: Same grounds.

The Court: As I understand it, you object to this entire line of questioning?

Mr. Garrett: Yes, your Honor.

(Testimony of John Louis Di Massa.)

The Court: On the grounds you have heretofore asserted? [695]

Mr. Garrett: Yes.

The Witness: It was less than '45.

Q. (By Mr. Schwartz): Approximately:

A. Oh, about \$180,000.

Q. Do you know, as general manager, on the information that you have told us that you had access to, what percentage of that \$200,000 approximately in '45 is represented by fish which came into your place of business from points outside of the state of California?

Mr. Garrett: Now I want to object further to the indefiniteness of that question and to point out to your Honor—as I said before it doesn't contain the elements—he asks whether the witness knows as general manager of the business what the proportion were of interstate and intra-state shipments, as general manager of the business. He doesn't ask, nor has it been shown, what basis the witness' answer to that question will be on so that we don't know.

The Court: I understand. That is the basis of your objection, and the objection is overruled.

* * *

The Witness: About 60 percent.

Q. (By Mr. Schwartz): How much?

A. 60 per cent.

Q. And asking you the same question with relation to 1946, what is your answer?

A. 60 per cent, or 65 per cent—60 per cent.

(Testimony of John Louis Di Massa.)

Q. Mr. Di Massa, to whom do you sell, the Los Angeles Fish and Oyster Company, sell its fish and crustaceans?

A. We sell to——

The Court: I do not think he wants the names of your customers.

The Witness: The steamship, the Los Angeles wholesalers, and many retail stores in and out of the state.

* * *

Q. (By Mr. Schwartz): Are you familiar with the shipments of fish and crustaceans by your company to points or customers outside of [697] the state of California?

A. Yes, I am. Every night I check the sales book.

Q. Will you relate where those places are outside of the state of California that **your fish and** crustaceans are shipped to?

A. Colorado, Utah, Wyoming, Washington, Oregon, Arizona, and there may be others. Those are the most. Did I say Utah? And Nevada.

Q. Does that take in the bulk of your business outside of California? A. Yes, sir.

Q. Do you know, as general manager of the Los Angeles Fish & Oyster Company, the volume of sales by your company for the year 1945, total sales?

A. Total sales for '45 was——

Q. Just approximately.

A. I am quite sure they are \$325,000.

(Testimony of John Louis Di Massa.)

Q. And do you know what the total volume of sales for the year 1946 is?

A. \$290,000.

Q. Now do you know what percentage or proportion of the total sales for the year 1945 is represented by shipments to the points outside of the state of California?

A. About a fifth or a fourth; 25 per cent or 20 percent. That is very close I think. [698]

Q. And for the year 1946? A. The same.

The Court: I think this is an appropriate time to recess.

* * *

Mr. Garrett: We wish to move at this time to have this witness ordered to bring in the books of his company on Monday morning.

Mr. Schwartz: And we object to the motion made by counsel.

The Court: The motion is denied. [699]

* * *

JOHN LOUIS DI MASSA

the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Schwartz:

Q. Mr. Di Massa, I believe you testified that in the course of your business you purchased fish from points from up in Washington and Oregon, is that correct? A. Yes, sir.

(Testimony of John Louis Di Massa.)

Q. How is that fish delivered to your place of business at San Pedro?

A. By Railway Express or refrigerated trucks.

Q. What truck lines do you employ for that purpose?

A. LACL Truck Lines, West Coast Truck Lines principally.

Q. West Coast Fast Freight?

A. West Coast Fast Freight; yes, sir.

Q. I believe you testified that you also shipped fish to points outside of the state of California. What type of transportation or how is that fish transported to those points?

A. Practically all by the Railway Express. [704]

Q. Now, how is that accomplished?

A. After an order is put up and iced and sealed, the express agent comes and makes out a bill of lading and gives us a receipt and it is delivered to the dock, and they load it onto their truck.

Q. I didn't get the last.

A. We bring it to the edge of the dock, and they put it aboard on their truck which is hauled into Los Angeles onto the various trains.

Q. You say you run it to the edge of the dock; where is that?

A. That is at San Pedro. The trucks back onto this dock.

Q. That is on the land side of the fishermen's wharf?

A. Yes, on the land side.

Q. And then what happens?

(Testimony of John Louis Di Massa!)

A. It is hauled into Los Angeles at the Union Station here, and segregated and shipped on various trains, wherever the destination may be.

Q. Handled by the Railway Express?

A. After leaves our dock it is all handled by the Railway Express.

Q. And with regard to the shipment of fish into the State, to your place of business, how is that accomplished?

A. That is delivered to our dock. [705]

Q. By the—

A. Railway Express Company, or the truck lines.

Q. How many employees do you have at the L. A. Fish and Oyster Company?

A. Now, or during the strike?

Q. No. Say in 1946, before May 29th.

A. Three.

Q. Three? A. Three.

Q. What kind of work do those people do?

A. Fish cutters, fish packers.

Q. Do you call them butchers?

A. Butchers.

The Court: How many employees did you say there were?

The Witness: Three employees, but one union butcher. There is one employee that just fixes boxes for shipment, more or less a handyman.

Q. (By Mr. Schwartz): Is this in May of 1946?

A. May of 1946 we had one union butcher.

(Testimony of John Louis Di Massa.)

The Court: It doesn't make any difference; I am not talking about the union; how many employees, how many people did you have working for you, that is what he wants to know.

The Witness: Three, your Honor.

Mr. Schwartz: Do you have facilities for freezing or refrigerating fish in your plant? [706]

The Witness: Yes, we have.

Q. (By Mr. Schwartz): Will you describe the operation of that plant, please?

A. Fish that is brought from the fishermen is cleaned, if it is not cleaned; if it is brought in clean, we pack it and store it away into our refrigerated boxes. That is fresh fish. But fish that we freeze, that is delivered to Union Ice Cold Storage. They freeze and glaze and storage.

Q. Is that at Wilmington?

A. At Wilmington, California.

Q. For the operation of your ice plant, do you manufacture ice, or do you purchase ice?

A. Our ice is purchased from the Union Ice Company in San Pedro.

Q. How do you get your ice?

A. It is delivered right alongside the ice crusher by the ice man.

Q. And that was the way your business was conducted up to May 29th of 1946? A. Yes, sir.

* * *

Q. (By Mr. Schwartz): On or about May 29, 1946, do you recall that you were at your place of business? A. Yes, I was.

(Testimony of John Louis Di Massa.)

Q. Do you recall anything unusual at your place of business on that day?

A. Pickets in front of the market and a picket boat on the water-front side.

Mr. Margolis: If your Honor please, I move to strike the testimony on the ground it is incompetent, irrelevant and immaterial, no relation to any issue in this case; and ask that we may have a standing objection to this line of questioning with this witness.

The Court: Motion is denied, and the objection will be deemed to have been made to each and every question on this line, without its repetition, with the same ruling by the court. [709]

Q. (By Mr. Schwartz): Now you mentioned something about pickets in front of the place. Will you describe what you saw?

A. There was about 10 or 15 men carrying banners, demanding a living wage, something to that effect, no price, no fish, no contract, no fish—something like that. It was quite obvious the place was being picketed.

Q. It was what?

A. It was obvious the place was being picketed.

Mr. Andersen: Move that that be stricken as his conclusion and opinion.

The Court: Motion denied.

Q. (By Mr. Schwartz): Your place of business has a dock on the seaward side and a dock on the land side, is that correct? A. Yes, sir.

Q. Where did you see these pickets?

(Testimony of John Louis Di Massa.)

A. They were off the dock, they were on the road which our trucks travel to go back onto the dock.

Q. They were on the street, the road?

A. Yes, sir.

Q. Did they do their picketing as you have described on that side or did they also go on the other side of the dock, on the seaward side?

A. They had a boat on the water in the harbor.

Q. I am talking now about these pickets that you described carrying these banners.

A. On the dock, no. I didn't see any.

Q. The ones that you saw——

A. Were on the streets and the picket both.

Q. I show you Government's Exhibit No. 2, and ask you whether that is the scene which you have described on the seaward side with relation to the boat.

A. That is the boat.

Q. I show you Government's Exhibit No. 1 and ask you whether you saw that scene enacted at your place of business?

A. Yes, sir.

Q. Are those the pickets that you saw on that date?

A. Yes, some are very familiar to me.

Q. Will you name them, the ones that you are familiar with?

A. The one referred to as Bunny.

Q. Is he a defendant in this case, or is he in this courtroom?

A. I don't believe so.

Q. Go ahead.

A. And Otis Sawyer, and Chris, the gentleman back there.

(Testimony of John Louis Di Massa.)

Q. Who is that?

A. The gentleman between Mr. Zafran and Mr. Smith. [711]

Mr. Schwartz: Will you stand up, please?

(The defendant Kennison stood.)

Q. (By Mr. Schwartz): Is that the gentleman you are referring to? A. Yes, sir.

Mr. Schwartz: May the record show that the defendant Kennison was identified?

The Witness: That is all I see here.

Q. (By Mr. Schartz): Now after May 29, 1946, did you or did your company obtain any fish from any of the fishermen at the wharf?

A. No, sir.

Q. And for how long?

A. Until about the end of June or 1st of July, about five weeks.

Q. Now during that time were you at your place of business? A. Yes, we were.

Q. You personally?

A. I was there for the first three weeks—two weeks, first two weeks.

Q. How frequently were you at your place of business in those first two weeks?

A. All day long practically.

Q. Will you relate what you saw as far as activity on [712] the seaward side of the wharf is concerned of the fishermen's wharf?

A. Well, this picket boat patrolled back and forth and there was no activity other than that.

(Testimony of John Louis Di Massa.)

Q. Did you observe that there was any difference in the number of boats coming in with fish or tying up to the wharf is concerned?

A. There wasn't any fish; no fish was brought in.

* * *

Q. Will you relate what you saw? Just state what you saw with relation to any activity on the landward side of the dock during this two-weeks period that you were at your place of business.

A. The first day we were given so many blocks of ice to carry the fish that we had in the icebox.

Q. From whom? A. From the iceman.

Q. All right. Did he bring it there with his truck? A. He brought it with his truck.

Q. Did you see his truck? A. Yes, sir.

Q. What else did you see?

A. Fish was delivered for a couple of days after the pickets first were established, fish that was coming in, a day or so—I don't recall exactly.

Q. Delivered by whom?

A. Well, the Railway Express or the West Coast Freight Lines.

Q. All right.

A. And I believe a truck of sea bass from Mexico.

Q. That was when, the first few days?

A. The first day, the day the pickets were established.

Q. And thereafter what happened?

* * *

A. Deliveries were stopped. [714]

* * *

(Testimony of John Louis Di Massa.)

Q. Do you sell to any people retail?

A. Yes, we do.

Q. Do you sell to people who are fish peddlers?

A. Yes, sir.

Q. During those two weeks did you sell fish to fish peddlers? [715]

A. We did for a couple of days but not the two weeks, maybe the first three or four days.

Q. How do these fish peddlers get their fish at your place of business?

A. They came with their trucks.

Q. During the month of June of 1946 did you have on order from points outside of the state of California shipments of fish to be delivered to your place of business—I don't mean June; I mean during the month of May? A. Yes, we had.

Mr. Andersen: Our same running objection to this line of questions.

The Court: Very well. Same ruling.

Q. (By Mr. Schwartz): Now with reference to the situation which you have described which you say started somewhere around the 29th——

A. Just before Memorial Day.

Q. Let's take the 29th of May. What, if anything, occurred with reference to those orders directly after the 29th of May? [716]

* * *

The Witness: They were delivered to the Union Ice & Cold Storage, and the Railway Express orders were left at the depot at Sixth Street.

(Testimony of John Louis Di Massa.)

Q. (By Mr. Schwartz): Sixth Street where?

A. San Pedro. And those that came by refrigerated truck, we had them routed to the Union Ice Company at Wilmington. Then we picked it up with our own truck. We went to the Union Ice and we went to the depot.

Q. Union Ice at Wilmington?

A. Yes, that is at Wilmington.

Q. What did you do there?

A. We brought them to San Pedro.

Q. To your place of business?

A. Yes, the first few days.

Q. Then after that what happened?

A. After about four days there wasn't any more business. The customers wouldn't come down to the dock any more. [717]

* * *

Q. With reference to the business of bringing in fish from points up north to your place of business, were there any orders on hand with those brokers or dealers that you did not get after the first four or five days in June of 1946?

The Court: What do you mean "up north?"

Mr. Schwartz: Washington and Oregon.

The Witness: I got them but not in San Pedro.

Q. (By Mr. Schwartz): Where did you get them? A. Los Angeles.

Q. And for how long did that continue?

A. Until the strike was ended.

Q. Through the month—

A. Through the month of May, yes, sir.

(Testimony of John Louis Di Massa.)

Q. Through the month of June?

A. Yes, sir, through the month of May and June.

Q. Where in Los Angeles did you get them?

A. National Seafood.

Q. The National Seafood Company?

* * *

Q. Where are they? A. Pico and Central.

Q. Are they wholesalers or retailers?

A. They are wholesalers.

Q. Now, with reference to the receipt at your place of ice from the Union Ice Company, will you relate what, if anything, happened in that regard at your place of business as to the continuance of the receipt of that ice?

A. There wasn't any more ice delivered after the first [719] day, or possibly the second day, but not more than that.

Q. Did any of the defendants visit your place on or about the 29th day of May with any representative of the ice company? A. Yes.

Q. Were you present at that time?

A. Yes, sir, I was.

Q. Will you relate what happened?

* * *

Q. (By Mr. Schwartz): What is the name or names of the defendants? A. Mr. Smith——

Mr. Schwartz: Indicating defendant Smith. Will you stand up?

(The defendant Smith stood up.)

Mr. Schwartz: Is that the man you mean?

A. Yes.

(Testimony of John Louis Di Massa.)

Mr. Schwartz: May the record show the witness identified defendant Smith.

Q. (By Mr. Schwartz): Who else was present?

A. With the ice man.

Q. What is his name? A. Alfred Dodder.

Q. Will you state what was said or what happened?

Mr. Margolis: We still object. There is insufficient foundation as to the place and time.

Mr. Schwartz: He said it was at his place of business.

The Court: Time of day?

The Witness: In the morning of the strike, of the 29th.

The Court: All right.

The Witness: We were asked how much ice we needed to take care of our fish that we had on hand.

Q. (By Mr. Schwartz): You say "We were asked"; who asked you?

Mr. Garrett: Objected to. No proper foundation laid.

A. Mr. Smith or the iceman.

The Court: Overruled.

Q. (By Mr. Schwartz): Go ahead.

The Court: Who else was present?

The Witness: My partner.

The Court: What is his name?

The Witness: John Joseph Demeglio.

Q. (By Mr. Schwartz): So there were four of you?

A. Four. There might be five. John Joseph Demeglio and I, we were asked.

(Testimony of John Louis Di Massa.)

Q. Describe what took place.

A. We were asked how much ice we needed to take care of the fish. [721]

The Court: Who asked you?

The Witness: Either Mr. Smith or the iceman, Mr. Dodder. How much ice we needed to take care of our fish which we had inside. And I forgot what we ordered. And we were told that was to be the final delivery of ice until the strike was settled.

* * *

Q. (By Mr. Schwartz): Who made that statement? A. Mr. Smith.

* * *

Q. (By Mr. Schwartz): By the way, are you here pursuant to subpoena?

Mr. Garrett: Same objection as before.

A. Yes.

The Court: Same ruling; objection overruled.

Mr. Schwartz: You may cross-examine. [722]

* * *

Cross-Examination

By Mr. Garrett:

Q. Do you know Mr. Ross, one of the wholesalers on the warf? A. Yes.

Q. When did you last see him?

A. I saw him Saturday morning.

Q. Did you talk to him about the testimony he had given in this case? A. No, sir.

Mr. Schwartz: If the Court please, that is objected to as outside the scope of the direct examination.

(Testimony of John Louis Di Massa.)

The Court: About the testimony he had given?

Mr. Garrett: He, Ross. [731]

* * *

Q. Did you talk to Ross in connection with the meeting of any association of fish wholesalers on the Los Angeles Municipal Wharf?

Mr. Schwartz: Same objection.

The Court: Same ruling. Objection sustained.

Q. (By Mr. Garrett): Have you or your concern ever been a member of the fish exchange in San Pedro?

Mr. Schwartz: Objected to, first of all, on the ground it is outside of the scope of the direct examination; and it is immaterial to the issues in this case.

Mr. Garrett: Preliminary, your Honor.

Mr. Schwartz: I further object on the ground that as far as it being preliminary is concerned, that the answer will certainly not be preliminary as far as getting over to the jury what Mr. Garrett is trying to get over to the jury. [732]

The Court: I think it is immaterial. The objection is sustained.

* * *

Mr. Margolis: I would like to make a suggestion that may be acceptable to the court and to counsel for the government. As has been indicated, we do object to all testimony concerning boycotting, picketing, and other economic activities in connection with the obtaining of this agreement. We know what the court's rulings have been, and our objec-

(Testimony of John Louis Di Massa.)

tions have been made simply for the purpose of preserving our record.

The Court: I understand.

Mr. Margolis: We would be perfectly satisfied if we had [764] a running objection to that entire line of testimony, to not continue making those objections and take up the time of the court. We know what the ruling of the court is going to be; we don't wish to argue it any further. It seems to us it would save time.

The Court: I think that should be agreeable. I don't think counsel should be under necessity of stating their objection each time, if some stipulation can be framed to protect the record in that respect. It is certainly agreeable to me. [765]

* * *

Mr. Margolis: Well, concerning the picket line, boycotting and any other economic activity of the defendants or persons acting in association with them for the purpose of obtaining the signing of the contract, which is in evidence as Government's Exhibit No. 3.

The Court: Do you anticipate to have testimony concerning similar activity at other ports?

Mr. Dixon: Yes, your Honor, particularly the port of Newport.

The Court: But also San Diego and Santa Barbara?

Mr. Dixon: Not particularly in those ports, your Honor, because there it was handled in a little different way. The situation under the indict-

(Testimony of John Louis Di Massa.)

ment as far as these activities are concerned is that we are going to limit the evidence generally to Newport and San Pedro.

Mr. Margolis: I would suggest that if it may be stipulated by Government counsel that the objection to all such evidence may have been deemed to have been made on the ground that it is immaterial, irrelevant and has no relation to any issue in this case, we would then make specific objections, however, of course reserving out right to object to hearsay and other matters not covered by this stipulation. [766]

The Court: Yes, but your general objection to the entire line of testimony is that it is incompetent, irrelevant and immaterial.

Mr. Margolis: It has no relation to the issues in this case.

The Court: Is that agreeable?

Mr. Dixon: Yes, your Honor I think we can agree to that.

The Court: From the evidence so far in the case I do not see any—I was looking again at the instructions this morning—it would seem to me that I would have to instruct the jury in the event the case gets that far that the admission of evidence concerning strikes and pickets are only admissible to go to the question as to whether or not there was a previous agreement. In other words, the defendants are not being tried for picketing or for striking.

(Testimony of John Louis Di Massa.)

Mr. Margolis: Your Honor please, we would be willing to agree that if the evidence is offered solely for that purpose that it would be admissible, but if it is offered for any other purpose, that is what we are trying to protect our record on.

The Court: For showing the agreement.

Mr. Margolis: If it is offered for the purpose of showing that by their subsequent activities that the jury may draw an inference that they were parties to the original [767] agreement, then we should think the evidence would be admissible for that purpose.

The Court: That is the basis that I have been admitting it all on.

Mr. Margolis: There has been no limitation upon it, however, and if that is going to be the instruction of the Court of course we think that instruction is correct.

The Court: That has been going through my mind. They are certainly not charged with picketing. There is no Federal offense for picketing. There is no offense for striking. The only offense charged is the conspiracy to restrain the trade in fish. That is the only evidence that it can be material to.

Mr. Margolis: May I state this, during the course of the argument on the motion to dismiss, it was at least my understanding of the Government's argument that they had two theories; one was that the agreement itself violated the law, and that in any event the subsequent activities to obtain the agreement independently violated the law.

(Testimony of John Louis Di Massa.)

The Court: I did not so understand the Government's position.

Mr. Dixon: Does your Honor want to hear our position on this whole general question at this time?

The Court: I would like to have some idea on that particular thing, whether or not it is your position that the [768] strike itself is an illegal thing other than merely evidence of the asserted conspiracy.

Mr. Dixon: I have some notations here on my indictment with reference to that which I think goes directly to it.

The Court: The charging part of the indictment is that "the defendants (together) have knowingly and continuously engaged in a wrongful and unlawful combination and conspiracy formed and carried out * * * to fix, determine, establish and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish * * *"

Now that is the charging part of your indictment.

Mr. Dixon: That is right.

The Court: And all the rest of it in Paragraph 13 has consisted "of a continuing agreement and concert of action among the defendants, the substantial terms of which have been that defendants agree to fix minimum prices * * * agree with respect to all types of fresh fish," and so on down the list.

Do you wish to make a statement or am I in error?

(Testimony of John Louis Di Massa.)

Mr. Dixon: No, your Honor. I think the materiality of those allegations will appear from 144 F. (2d) at 833. The case is in point at 824; and 137 F. (2d) 464, where the Court held in that particular part of the decision—that was the A & P case—that that the result to be achieved is what the statute condemns.

The Court: The A & P case is the second one. What is [769] the other one?

Mr. Dixon: The other one is 144 F. (2d). I don't have the title here. Your Honor caught me sort of off base here. I am not prepared to discuss it except I can give you that reference. I don't know the title of that case.

The Court: Is it the general idea that all this evidence of their acts and conducts in connection with the picketing and the actual strike and so on and so forth, is offered for the purpose of showing the conspiracy?

Mr. Dixon: That is right. This is a conspiracy case, your Honor.

The Court: I cannot see what else it would be admissible for.

Mr. Margolis: It shows the conspiracy to do what, your Honor.

The Court: A conspiracy to restrain this trade in fish. Now they can show that by showing, if they can ever get a photograph of people present sitting around the table, but they showed what they did. What did they do? They did restrain the sale of fish. That is I suppose their theory.

(Testimony of John Louis Di Massa.)

Mr. Margolis: I am a little confused at this point. I think there are two possibilities: one possibility is that that evidence is introduced simply for the purpose of showing that these defendants were parties to an agreement among the fishermen to obtain a price-fixing agreement. That is one possible theory.

Another possible theory is that the activities in and of themselves were wrongful and were part of the wrongful acts complained of.

Now if the evidence is offered for the former purpose, merely for the purpose of showing that these defendants were parties to an agreement to fix prices, we would have no objection to the evidence.

The Court: It is an agreement to restrain trade, I think, counsel. Whether it is to fix prices, it is an agreement to restrain trade under the Sherman Act.

Mr. Kenny: Pardon me. I think it is this way: It is an agreement to fix prices. It may, as a matter of law, turn out that the agreement to fix prices restrains trade.

The Court: As far as I am concerned now and until the matter gets down further, it is an agreement to restrain trade. Now they restrain trade by fixing prices or something else, but it is an agreement to restrain trade, and a conspiracy to do that. They are not charged with the restraint of trade. It is an agreement to restrain trade and a conspiracy to do that.

Mr. Margolis: Let us let the record stand.

The Court: Let us look at the cases during the noon hour.

(Testimony of John Louis Di Massa.)

Mr. Kenny: I have one other thing that we can be thinking [771] of during the noon hour, that goes to this: It would be equally material on the same theory of law as to whether or not the trade was actually restrained, that is, the business, so this matter of whether a man sold less fish or X fish is not material.

The Court: Except to show that that was the purpose of the agreement. You can show that the purpose of a person buying a gun is to kill somebody by showing he did kill somebody.

Mr. Kenny: If he is merely accused of buying a gun to kill somebody, you wouldn't have to show that he killed somebody.

The Court: But you could.

Mr. Margolis: I think that gets us down to this, if we understand—let me start over. Perhaps I had better do it after recess.

* * *

Cross-Examination

By Mr. Kenny:

Q. Mr. Di Massa, last Friday afternoon the Court asked you (page 685 of the transcript): "Did you ever finance any fishermen for a portion of the lay?" And you answered "Yes."

The Court said: "The lay is what they call the catch?" And you replied, "Or the equipment for paying their grocery bill or fuel bill."

Do you remember that conversation?

A. Yes, they would ask for help and we would give it to them.

(Testimony of John Louis Di Massa.)

Q. And you said you made various loans of \$10 or \$15 to various fishermen? [787] A. Yes.

Q. Is that a general practice there on the fishermen's pier among your other fish dealers?

A. I don't know.

Q. To your knowledge are you the only dealer who makes such loans?

A. All I can answer is for my own company, sir. I really don't know.

* * *

Q. Then you make those loans, if the fisherman had doctor bills or a death in the family or a birth in the family, that is some of the purposes for which you make those loans, is that right, Mr. Di Massa?

A. If he is hard up; sure.

Q. If there is a storm and he loses part of his equipment, why you make such a loan, don't you?

A. Not generally. It is once in a while. It is not as a rule. Not every fisherman.

Q. I realize that, but if he is hard up, as a result of some loss at sea, you help him out, isn't that right?

A. I can give you one example.

Q. Fine.

A. The last time I loaned money to a fisherman he had to buy a battery. His boat had blown up and he got burned and had to go to the hospital. While he was at the hospital they looted his boat, and I believe we gave him \$50 for getting his battery equipped again. I have seen the fisherman but he has never sold me fish since.

(Testimony of John Louis Di Massa.)

Q. How about the fishermen, are they slow pay or good pay?

A. Not necessarily. I have enjoyed very good relations with the fishermen.

Q. I was just wondering as a credit risk, but I suppose like other credit risks it depends on their financial conditions whether they can repay you promptly or slowly, is that right?

A. That is right.

Q. And if there is a season when, say, the albacore are not running or barracuda are coming in late, seasons like that when there is just no fish in the sea, then they are pretty slow pay, is that right?

Yes, sir.

Q. And if there is a season where fish is shipped in from other ports, from the north or south or Mexico, and the [789] price of fish is low, why then they are slow pay under those conditions too, aren't they?

A. Well, fish at other ports don't necessarily hinder them catching fish.

Q. What I assumed was that fish coming in, fish caught elsewhere being shipped into the Los Angeles market, that causes a drop in price?

A. That is all it does. It regulates the price. If more fish is caught up north, that is, of the same species as caught down here, why naturally it is going to hurt their price because there is competition with the north.

Q. And as a result you don't get your money back as fast?

(Testimony of John Louis Di Massa.)

A. Well, sir, we don't loan enough to the fishermen to worry about that. When I say we give them money, it isn't a general practice.

The Court: How many loans have you made in the last two years, for instance?

The Witness: One.

Mr. Kenny: I was going to compliment the witness on his generosity.

The Witness: That is the last time I was asked for it.

Q. (By Mr. Kenny): You told the Court that you financed the fishermen for a portion of the lay. Now can you tell me—and then it [790] went on to say the lay was the catch—now can you tell me just what arrangement you make for security on your loan?

Mr. Schwartz: Now, if the Court please, I object to the question on the ground that this witness has stated that he has made just one loan in the last two years.

The Witness: I will retract that, sir.

I bought some albacore jigs for Tommy Sawyer prior to the strike.

The Court: You bought some albacore jigs?

The Witness: Yes.

The Court: How much?

The Witness: \$5 or \$6 or \$7.

The Court: How many loans have you made in the last three years?

The Witness: Not enough to worry about.

The Court: Has it been three or four loans?

(Testimony of John Louis Di Massa.)

The Witness: In the last three years, yes, sir, I imagine so. I know of two. One was the fellow whose boat burned and——

The Court: One was for \$50.

The Witness: And Mr. Sawyer, he never did get his jigs. I bought the jigs and then the strike came and that was the last I saw of him.

The Court: You still have the jigs?

The Witness: No, I sold them to another fisherman. But [791] the idea was, your Honor, that——

The Court: Then you did not advance the money to Sawyer?

The Witness: No, but that was the general practice, if he needed the jigs I would give them to him, and if he came with fish and sold me fish and he wanted to take off the \$5 or the \$10, I would do it; if he wanted to keep it until the next time, that was up to him. He didn't have to sell me his fish.

The Court: I think what counsel is getting at, and what prompted my question, was whether or not it was a general practice where fishermen came in and said, "I need a substantial sum of money and I will give you a share of the lay," that is, a portion of the catch, 50 per cent of the catch?

The Witness: That was a practice before but not in the last three or four years. They have been very successful in fishing.

The Court: How long did that practice continue?

The Witness: That practice has been going on I guess since——

(Testimony of John Louis Di Massa.)

The Court: How long ago did it stop, would you say now?

Mr. Kenny: I hate to object to your Honor's question, but I don't think he has testified that it stopped generally.

The Court: He said up to three or four or five years ago.

How long ago? [792]

The Witness: What I am trying to say, your Honor, is that the fishermen have been succesful in the last three or four years and he doesn't have to come to the markets for any stake or anything like that. Just as in the case of this fellow whose boat blew up and he lost his equipment.

The Court: And you gave him \$50?

The Witness: Yes. And he hasn't sold me any fish since. I had no claim on his catch unless I wanted to bring him to court, I guess. That is a different story.

Q. (By Mr. Kenny): Mr. Di Massa, you know about the boat Volga, don't you?

A. Yes, sir.

Q. Isn't Bill Baxter the operator of that boat?

A. That boat was sold a year and a half ago or two years ago.

* * *

Q. Wasn't he the operator of the boat?

A. Yes, he was.

Q. You bought that boat, didn't you? [793]

A. Yes.

(Testimony of John Louis Di Massa.)

Q. And then you let Bill Baxter operate it, isn't that right?

A. That is right. Do you want the years? It was prior to the question I was asked.

Q. No, I am just asking you about the transaction with Mr. Baxter.

* * *

The Court: While he is at it, you may explain your answer. How long ago was it?

The Witness: We bought that boat I believe three years ago.

The Court: How long did you have it?

The Witness: We had it about a year.

The Court: All right. [794]

* * *

Q. On the boat Volga, will you tell us in your own words the financial arrangements you made with Mr. Baxter about his purchase, how you finally sold it or how it was done? Just explain it to us.

* * *

The Witness: Mr. Baxter had his eyes on this fishing boat Volga, and he had, I think, \$1000. He didn't have enough money to buy the boat outright, so he came to us.

Q. (By Mr. Kenny): Did you own the boat?

A. He owned the boat. It was in his name. Everything was in his name. It was just that he made a note to us. I believe it was for \$2000. I don't remember exactly. He didn't have enough money to pay the full amount of the balance of the boat.

Q. What was your agreement as to how he was to repay the note?

(Testimony of John Louis Di Massa.)

The Court: I understood you to say that you bought the boat from Baxter.

The Witness: No, your Honor. Mr. Baxter wanted to buy [796] a boat and he did not have enough money to buy it.

The Court: And you helped Baxter buy the boat?

The Witness: Yes, sir.

The Court: And Baxter later sold the boat?

The Witness: Baxter later sold the boat.

The Court: But he did not sell it to you?

The Witness: No, sir.

The Court: All right.

Q. (By Mr. Kenny): Now what arrangements did you make with Mr. Baxter to repay the money which you advanced him to buy the boat? Was he to give you a portion of his catch?

A. No.

Q. What arrangement was made?

A. There was nothing in writing that he had to. He didn't have to give us a portion of his catch.

Q. I don't care whether it was in writing or not. I think what we want to know is what the arrangements were, whether they were in writing or oral.

A. He sold us a portion of his catch, as he did to other dealers.

The Court: He wants to know whether it was tied into the matter of your financing the purchase of the boat.

The Witness: No, sir.

(Testimony of John Louis Di Massa.)

The Court: What did you do? Did you give him some [797] money and he gave you a note or did you take a mortgage on the boat or did you take a mortgage on his lay, or what did you do? What was the arrangement? Or did you just loan him the money and say "All right"?

The Witness: No, I believe he signed the note.

The Court: And a mortgage?

The Witness: I don't think the boat was mortgaged. He just signed the note.

The Court: He just signed the note?

The Witness: I don't remember exactly.

The Court: Did you have any agreement with him in connection with that transaction that he had to sell his catch to you?

The Witness: No, sir.

The Court: Or any portion of it?

The Witness: No, sir.

Q. (By Mr. Kenny): If he sold his catch to anyone, you or anyone else, did you get a portion of the proceeds of that for the advance you made on the boat?

A. I think not. I will have to correct myself on that.

You see, this transaction was between dad and Mr. Baxter, that is, I had nothing to do with this part of buying the boat. I think we own half that boat now, and Bill Baxter borrowed money from us for the rest of his share. He had [798] half and we had half, and we gave him some money plus his other cash to pay his share.

(Testimony of John Louis Di Massa.)

Q. Well, then, the proceeds as the various catches came in, were they divided between you as part owner of the boat, is that your testimony?

A. Yes, sir. [799]

* * *

The Court: The jury is instructed to disregard the statement of Judge Kenny.

What was the deal you made with this fellow and what is it now?

The Witness: The fellow wanted to buy a fishing boat. He didn't have money. He had a thousand dollars. I think the boat at that time was \$4,000. We bought half of the boat and he bought the other half. He owed us the thousand dollars himself. Then at the end of the month when he made his figures, the part that we owned, the half share of the boat, we received that.

The Court: That is to say, you didn't pay him for the half of the catch?

The Witness: No.

The Court: Or the half of the lay?

The Witness: Oh, yes, sir. We paid him. [800]

The Court: For the whole lay?

The Witness: I don't understand you.

The Court: The whole catch? Every time he came in?

The Witness: No, sir, we didn't buy his whole catch. Sometimes we didn't buy any of it. We bought the fish as we needed it.

The Court: Sometimes you didn't buy any?

(Testimony of John Louis Di Massa.)

The Witness: Sometimes we didn't buy any of his catch. Then when he would make his figures and after taking out social security and expenses and the share with his fishermen, he would give us a statement of what the boat cost for the previous month or week.

The Court: And half of that was yours?

The Witness: Not half of the catch, half of the boat's share. But that did not come out of the fish.

The Court: How many men did he have on this boat?

The Witness: I don't know. He always had one or two.

The Court: Did they share the lay or were they employed?

The Witness: We just bought the boat. I don't know about the equipment. The equipment to fish Baxter bought that, the fishing gear.

The Court: When he would take a man out to fish with him, would they share the catch equally?

The Witness: I don't know. I know it was on a share basis but how it was done, I don't know.

Q. (By Mr. Kenny): Your share was determined after what other shares had been taken out?

A. All we got was the boat share, half of the boat share.

Q. Will you explain what the boat share was? That is, what percentage of the proceeds of the catch or lay did the boat get?

(Testimony of John Louis Di Massa.)

A. I don't know exactly. If you got \$100 worth of fish, they figure how much gas they bought, and that was deducted, maybe it was net \$90, and I imagine each fisherman got a share, Mr. Baxter maybe got two shares as being skipper, and the boat got a share. Say there was \$90 and there was nine shares, the boat share was \$10. Out of that \$10 we received \$5, because we only had half of the boat.

Q. You got \$5 for the money you put in it?

A. That's right.

Q. And Mr. Baxter got——

A. I imagine \$20.

Q. \$20 for the work that he put in catching the fish, is that right, and each of the other fishermen got \$10 a piece for the work they put in?

A. As an example, yes, sir.

The Court: Pardon me. Are you familiar with what they call sharing the lay, a fisherman goes out and a boat gets so much and net gets so much?

The Witness: Yes.

The Court: Will you explain that general idea to the jury?

The Witness: I have never been a fisherman myself, but I have the family in the fish industry, my father-in-law was fishing captain, and my cousin is in the fishing industry, and it is all on a share basis. If the boat catches a thousand dollars worth of fish——

(Testimony of John Louis Di Massa.)

The Court: Wait. Suppose a man owns a boat, but he isn't a fisherman?

The Witness: All he gets probably is——

The Court: Wait a minute. Suppose there is a man who owns a boat and he isn't a fisherman, and then he has to have a man who is captain of the boat and he has to have three in the crew, and a cook——

The Witness: Yes, you have to have the cook.

The Court: What is that?

The Witness: You have to have the cook.

The Court: Yes, you have to have the cook. You have three in the crew and the cook, that is four, and the captain is five, and the boat is six.

The Witness: It depends on the size of the boat.

The Court: Suppose it is a boat big enough to have that crew. For example, would that be divided into ten shares,—the boat would get so many shares?

The Witness: Your Honor, if you had five men on the boat, the boat would demand two shares, because it would be a bigger boat. It depends on the size of the boat.

The Court: The thing is divided into a certain number of shares,—it might be ten, or seventeen, or it might be nineteen?

The Witness: Exactly.

The Court: Then among the crew, and the boat, and the equipment, and the cook——

The Witness: Yes, sir.

(Testimony of John Louis Di Massa.)

The Court: —they divide up that catch when it come in, is that correct?

The Witness: That is the way I understand it. That is the way I am quite sure it is done.

The Court: So if there were ten shares the boat might get two-tenths?

The Witness: Yes.

The Court: And the captain might get two-tenths? The Witness: Yes.

The Court: And the cook might get one-tenth, and the rest of the crew might get one-tenth each of the total proceeds from that catch?

The Witness: Yes, sir.

The Court: Is that generally a description of the custom? [804]

The Witness: Yes, sir.

The Court: What they call sharing the lay?

The Witness: Yes, sir.

Q. (By Mr. Kenny): All right. Now let's talk about the cook, he goes out on that boat and cooks and prepares the meals? A. No.

Q. What else does he do?

A. Well, he has got the worst job on the boat.

The Court: Well, what else does he do?

The Witness: He works with the men.

The Court: You mean he is a fisherman?

The Witness: Yes, primarily a fisherman.

The Court: Fisherman and cook, too?

The Witness: Yes.

Q. (By Mr. Kenny): He is kind of a second-class fisherman?

(Testimony of John Louis Di Massa.)

A. Yes, second-class fisherman and first-class cook.

Q. All he does is work on the ship, is that right?

* * *

A. Yes.

Q. (By Mr. Kenny): If they go out to sea and they don't catch any fish at all, what does the cook get for his work on [805] that voyage?

A. As far as I know he doesn't get anything. He is on a share basis.

Q. And if they go out to sea and they catch some fish, but they come back and they can't find anybody to sell it to, what does he get paid for it?

* * *

The Court: * * *

If they can't come back and sell the fish, what do they get?

The Witness: The cook gets as much as the other members of the crew get. If they don't get anything, he doesn't get anything himself.

Q. (By Mr. Kenny): If the fish are sold for a price that doesn't pay for the gasoline, which you say was taken out first, there is nothing to be shared, is there, on that particular voyage?

A. That's right.

Q. So the cook gets nothing, is that right?

A. To the best of my knowledge, that is.

The Court: That is argumentative.

The Witness: I never owned a fishing boat. That is all—— [806]

The Court: That is all. I don't mean that is all of the question, but that is all for that one.

(Testimony of John Louis Di Massa.)

Q. (By Mr. Kenny): So when you went into this venture, say there is a \$100 catch, you got \$5 back for the money you had advanced?

A. Yes, as an example.

Q. And the other people got shares based on the labor that they had advanced on that voyage, is that right?

A. The \$5 was part of a share, too. It was all a share basis.

Q. And if the trip was a failure either in the matter of prices returned or fish caught, why, none of you got anything?

* * *

A. That's right.

The Court: Did you enter into any similiar arrangement with any other boat or fisherman, or have you within the last five years?

The Witness: No, sir; that was the only boat.

Q. (By Mr. Kenny): At no time during the last five years,—is it your testimony that these fishermen to whom [807] you made advances of money, you did not require any of them to give your firm a prior right to the fish that they caught, at no time during the past five years?

A. No.

Q. Do you know of any other instances where that was required in the past five years by dealers on the wharves?

Mr. Schwartz: I object to this as calling for hearsay testimony, if the court please.

Mr. Kenny: He is an expert, your Honor.

The Court: Do you know of any instances?

(Testimony of John Louis Di Massa.)

The Witness: I can't say. I can't say; I don't know.

* * *

The Court: No. Have you ever heard of anybody doing that down there, advancing money and getting a share of the lay for it?

The Witness: I don't know if anybody ever advanced the money and getting a share of the lay. I know they advanced money, because this particular boat I gave \$50 to that [808] burned up, somebody else gave money, too. As far as contracting for the fish they caught, I don't know.

Q. (By Mr. Kenny): I see. Do you know of any instances where a fisherman who was a debtor to a creditor-dealer was obliged to accept whatever price the dealer offered?

* * *

The Witness: No, sir, I don't know.

Q. (By Mr. Kenny): you know of no case where the fisherman was obliged to offer his fish first to a creditor-dealer? A. No, sir.

The Court: Excuse me. What is the custom in that business about settlements,—weekly or monthly or semi-monthly?

The Witness: Your Honor, they can get paid any time they want, when they sell us the fish. They can get paid cash right now if they want it.

(Testimony of John Louis Di Massa.)

The Court: Is there any custom? For instance, in the restaurant business all due bills are payable Saturday.

The Witness: We like to have them come on Mondays, the following Monday, for their check.

The Court: At least by the following Monday?

The Witness: Yes. But if they want the cash then, or check, we give it to them.

The Court: That is generally the custom in the business?

The Witness: I imagine it is.

Q. (By Mr. Kenny): Do you have any connection with the Independent Fish Company?

A. No, sir.

Q. Is that a company on the pier there too?

A. Yes, sir.

Q. Is it run by any relatives of yours?

A. Yes, sir.

Q. The total frontages of those, just to get the physical picture, how long is that wharf, that fisherman's wharf, in San Pedro?

A. The whole wharf?

Q. Yes. What is the space occupied by the frontages of all the fish dealers?

A. Each market?

Q. Yes, about how many feet?

A. About a forty-foot frontage. It depends. We have three stalls. The stall, I think, is about 35 or 40 feet. Our particular market has three stalls, which is about 120 feet wide. The next door to us has two stalls, next to him has one stall.

(Testimony of John Louis Di Massa.)

Q. And all the dealers are just side by side right there [810] on the pier?

A. Yes, they are all neighbors.

Q. And friends?

A. Sometimes.

Q. And relatives?

A. They are not very good friends, relatives.

Q. Last Friday, in answer to a question by Mr. Schwartz at page 680, line 10 of the transcript, you said:

“When the fisherman brings in his catch, I have an idea what I can pay for it; if I could buy it at that price and make a profit, I buy it; if he wants too much, I just don’t buy it.”

Now, first, how do you form your opinion that that is too much?

A. I figure what the cost would be to handle the fish and what I could receive from my customers.

Q. In other words, you figure what the amount of markup is that you would have to make or put on the fish that you buy, and determine whether or not if that mark-up, added to what you paid, would permit you to sell to your customers, is that right?

A. Yes, sir.

Q. Can you tell me what your customary mark-up per pound is on the various principal species of fish that are handled? [811]

A. Well, that depends on the type of sale. You take a wholesale sale, by that I mean a fellow that will buy a thousand pounds of one kind of fish, you

(Testimony of John Louis Di Massa.)

figure four cents is a fair mark-up. We will have peddlers that come in there and buy 150 pounds of fish, of six or seven different varieties, and then we supply them with their ice, free ice for their little peddler wagons—we have to figure six cents mark-up. Shipping out, about five cents, because you have your box—well, it is also small amounts, maybe it is three or four different types.

Q. Was there a fixed mark-up during the O.P.A. period? A. Yes, sir.

Q. What was that?

A. It ran pretty close to how we operated. That is, a wholesaler was about three cents, and then stock trucks four cents, and retail stores five cents.

The Court: Is that generally, or is that true altogether?

The Witness: Under O.P.A. that was one blanket set-up. That was the price.

Q. (By Mr. Kenny): About how many pounds of fish can you store in your own icing plant?

A. Fresh fish?

* * *

Q. Well, assuming whether it is fresh fish or coming [812] from a truck, it would be the same kind of storage facilities required?

A. We have frozen fish and the fresh fish; we have two different boxes.

Q. Well, what are your total storage facilities for fish of both kinds?

A. Fresh and frozen?

(Testimony of John Louis Di Massa.)

Q. Yes, all kinds.

A. I guess about 18, 20—20,000 pounds.

Q. About 10 ton?

A. Yes, about 10 ton. That is fresh and frozen.

Q. Do you have any cold storage facilities elsewhere?

A. Yes, we rent space from Union Ice & Cold Storage in Wilmington.

Q. What is your storage capacity there that you rent?

A. That is almost unlimited.

The Court: You mean that varies according to your needs?

The Witness: We also store fish at L. A. Ice in Los Angeles. We can store all we want, 100 tons if we want.

The Court: Do you have a permanent storage capacity there?

The Witness: No, sir.

The Court: Does it vary with the amount of fish you have? [813]

The Witness: It varies with the amount of fish we have. We are charged by the amount of fish in storage. We don't rent a certain space.

Q. (By Mr. Kenny): So you are protected by your storage facilities if there is a glut of fish on the market, you can hold it until that surplus has been sold off, can't you?

A. What we have in storage is very little fish we get in San Pedro. We store mostly the fish from the north, halibut and salmon, that is, northern halibut.

(Testimony of John Louis Di Massa.)

Q. The reason for that is that the fishermen of San Pedro have no facilities for storage?

A. Yes, they do.

Q. These individual fishermen, these fishermen who are here, do they have facilities for storage?

A. There is nothing to prevent them.

Q. Do they have them?

A. No more than we have. Union Ice and Cold Storage is a public storage.

* * *

Q. (By Mr. Kenny): If the reason that you store mostly out of Los Angeles fish, fish coming from other areas, if you store that and you don't store the local fish, is that the [814] local fish, if it is not sold and the seller has no storage facilities, he has to sell it at a lower price?

* * *

A. No, sir.

The Court: Let me ask you this question: Generally is the fish which is shipped in here from other ports or areas competitive with the fish that is caught out here and landed at San Pedro?

The Witness: Yes, sir, definitely.

The Court: Is it the same fish?

The Witness: Not the same fish, your Honor, but it still is competitive with this fish, because it is fish.

The Court: It is fresh fish?

The Witness: Yes, fresh fish.

The Court: Do you ship barracuda?

(Testimony of John Louis Di Massa.)

The Witness: Well, we will buy barracuda through San Diego if there is no barracuda in San Pedro.

The Court: Do you ship in barracuda from Seattle?

The Witness: There is no barracuda caught in Seattle.

The Court: No barracuda?

The Witness: No.

The Court: What comes in from there,— mostly halibut? [815]

The Witness: Halibut, salmon, ling cod, black cod, true cod, filet of sole, filet of flounder. That all affects the price of fish down here. They ship to L. A. wholesalers. We have to compete with that price to sell our merchandise. You see, the Seattle just doesn't ship to San Pedro; they will ship to Los Angeles wholesalers, which are our customers, and Washington-Seattle fish is a competitive fish with ours.

The Court: In the fish business all fish is competitive with all other fish, is that the idea?

The Witness: Yes, sir.

Q. (By Mr. Kenny): And competitive with pork chops and lamb chops? A. It is.

Q. And eggs and cheese, isn't that right?

A. It is.

The Court: Well, there are a lot of people that eat fish on certain days of the week and they don't eat pork chops on certain days of the week, so on those days it is not competitive.

(Testimony of John Louis Di Massa.)

Q. (By Mr. Kenny): I gather—you mentioned all this fish shipped in from the other areas into the Los Angeles market, the fish that is consumed in the Los Angeles market—wouldn't you say that about three times as much of it is shipped into the market from other places than comes in from [816] this Southern California area?

Mr. Schwartz: Wait a minute, your Honor. May I have that question read?

The Court: Yes, you can. He is asking him, in essence, if there isn't about three times as much fish sent in as there is caught in San Pedro. Isn't that right?

Mr. Kenny: Yes. I said three times, but isn't it about four to one?

The Witness: I think you are quite right on that.

Mr. Kenny: I think I am about through, your Honor. Thank you, Mr. Di Massa.

* * *

Redirect Examination

By Mr. Schwartz:

Q. You testified you were present at a meeting with Zafran and two or three other dealers, or three or four other dealers, is that correct?

A. Yes, sir.

Q. And at that meeting the question of a contract was discussed, is that correct?

A. Yes, sir.

(Testimony of John Louis Di Massa.)

Q. Was anything stated at that meeting by Mr. Zafran as to what would happen to the dealers if the contracts were not signed?

A. No more fish would be brought into San Pedro until a contract was signed.

Q. Do you remember the exact words he used?

A. I can't remember the exact words.

Q. Was that the substance of it?

A. That was the general idea, that if we didn't sign the contract there——

The Court: There was a meeting before——

The Witness: Before the strike. The meeting we had in Zafran's office

Mr. Anderson: Pardon me. When was that meeting?

The Court: He said it was before the 29th. And he testified in his cross examination, as near as I can understand his fixing the date as being about May 27th.

The Witness: Yes, a couple of days before.

Q. (By Mr. Schwartz): Mr. Di Massa, you were asked about having spoken to Mr. Ross, and you mentioned having been up in room 1602 of this building. You have been waiting around this court room for several days, have you not?

Mr. Anderson: To which we will object, if your Honor please, as being incompetent, irrelevant and immaterial.

(Testimony of John Louis Di Massa.)

The Court: It was brought out on cross examination about where he was staying up in 1602.

Mr. Anderson: The question was whether he was there, may it please the court It may be that the gentleman waited up there two or three days, it may well be.

Mr. Schwartz: I am asking him.

The Witness: Yes, sir.

The Court: He answered the question. He said yes, sir.

The whole thing is trivial, whether he was in 1602 or whether he has waited several days.

Mr. Anderson: We think the whole thing is trivial, your Honor.

Mr. Schwartz: They asked about it; we didn't, your Honor.

The Court: Is that all?

Mr. Schwartz: Yes.

* * *

NELLO CASTAGNOLA

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: Nello Castagnola.

* * *

Direct Examination

By Mr O'Malley:

Q. What business are you in, Mr. Castagnola?

A. Fish industry; fisherman.

(Testimony of Nello Castagnola)

Q. How long have you been in that business?

A. Since last February.

Q. What were you doing prior to that time?

* * *

A. I was in the Army.

Q. How long were you in the service?

A. Two and a half years.

Q. Prior to that time had you done any fishing?

A. No.

Q. So when you came out of service around January of 1946, is that correct?

A. That is correct.

Q. Directing your attention to the first week in June of 1946, were you doing anything at that time with reference to going fishing?

A. I was just fishing.

Q. You were fishing at that time?

A. Up to that time; yes, sir.

* * *

Q. What did you fish for, Mr. Castagnola, what type or kind?

A. I was fishing for barracuda.

Q. Fresh fish?

A. For the fresh fish markets.

Q. Where did you sell your catch?

A. In the Municipal Fish Wharf in San Pedro.

Q. To the dealers on the Municipal Fish Wharf in San Pedro, is that correct?

A. Yes.

Q. What did you receive from them in the way of compensation? Did you receive simply the proceeds of the sale of your fish?

(Testimony of Nello Castagnola)

A. They gave us a fish and game ticket, and at the end of the week we would go and collect our check.

Q. From the dealers?

A. Yes, sir.

Q. Did you receive any wages or salary of any kind from them?

A. No.

Q. Are you under their control or direction in any manner?

A. No.

Q. Last June, who were you fishing with? I am directing your attention specifically to the first part of the month.

A. I was fishing with Joseph Stagnaro.

Q. Subsequent to that time were you fishing with anybody else?

A. No.

* * *

Q. Did you at any time participate in a fishing venture with any member of your family? Did your family own a boat at any time?

A. Yes, they owned a boat.

Q. What was the name of the boat?

A. The Flyer.

Q. Where was that stationed? Was that San Pedro?

A. That is in San Pedro.

Q. In the early part of June, were you doing anything about getting the Flyer ready to fish?

* * *

(Testimony of Nello Castagnola)

The Court: That is preliminary, I think. The objection is overruled.

Let us get it a little bit straighter. You began fishing in January?

The Witness: That is right.

The Court: And did you fish with somebody besides your family then or a member of your family?

The Witness: Joseph Stagnaro, I fished with him up until the time of the strike.

The Court: And then?

The Witness: Then after the strike I fished with my brother.

The Court: Then you fished with your brother on his boat?

The Witness: On my father's boat.

The Court: Your father's boat?

The Witness: Yes.

* * *

Q. (By Mr. O'Malley): Did you have a conversation with Mr. Smith of Local 36?

Mr. Anderson: Now, if the Court please, there is no foundation laid there with respect to who Mr. Smith is.

The Witness: Was that after the strike was pulled?

The Court: Just a minute.

I think that is correct. The objection will be sustained to the latter portion of the question.

The question is, did you have a conversation with Mr. Smith on or about June 6th, is that right?

Mr. O'Malley: That is right.

(Testimony of Nello Castagnola)

The Witness: That was during the strike?

Mr. O'Malley: That is right.

The Witness: Yes, about a clearance card.

Q. (By Mr. O'Malley): You discussed the subject of the clearance card, is that right?

A. That is right.

Q. Where did the conversation take place?

A. At their union hall.

Q. Where is that located?

A. That is the Fisherman's Wharf in San Pedro.

Q. At San Pedro?

A. Yes.

Q. And you went to the union hall at the Fishermen's Wharf in San Pedro and you had a conversation with Mr. Smith. Can you tell us what was said by you and what was said by Mr. Smith?

* * *

The Court: Would you know this Mr. Smith?

The Witness: Yes, I would. There he is over there in the green.

(The defendant Smith stood).

Q. (By Mr. O'Malley): That is the gentleman you talked to? A. Yes.

Q. Did you have any discussion with him with reference to a clearance card?

A. There was a whole committee there.

Q. Who else was there besides Mr. Smith?

A. I think you were there, I am not quite sure but I think you were.

The Court: Which one? The man at the end of the table?

(Testimony of Nello Castagnola)

The Witness: The man at the end of the table.

* * *

You mean this man here?

(The defendant Knowlton stood.)

The Witness: Yes.

The Court: Mr. Knowlton?

The Witness: George Knowlton.

The Court: Mr. Knowlton?

The Witness: Yes.

Q. (By Mr. O'Malley): Did you see anybody else in this courtroom who was present at that conversation?

A. The union leader over there. (Indicating.)

* * *

The Court: Will you stand up?

(The defendant Zafran stood up.)

The Court: Mr. Zafran?

Q. (By Mr. O'Malley): Is that the man you talked to?

A. Yes, when I came in I spoke to him first.

Q. What did you say when you got to the union hall? [830]

* * *

Q. (By Mr. O'Malley): Just tell me what you said when you got there. Tell the Court and the jury what your conversation was, what you said and what they said.

A. We wanted to find out about the clearance cards.

(Testimony of Nello Castagnola)

Q. What did you ask them?

A. We asked him if it was true or not that they had let some of the boats go fishing.

Q. What was said?

A. They said to go in and see the committee.

Q. Who made this statement?

A. Mr. Zafran.

Q. What did he say?

* * *

The Witness: They will tell you if you can go out fishing or not.

Q. (By Mr. O'Malley): Then what happened?

A. We went in to see the committee.

Q. Who went to see the committee?

A. There were two or three of us there.

Q. You were included? A. Yes. [831]

* * *

Q. Just tell us what was said by you when you went into the committee room. Did you repeat your request for a clearance card?

A. Yes, we repeated it. We asked him about going out fishing.

The Court: Asked who this time?

The Witness: The committee.

The Court: The committee?

The Witness: Yes.

Q. (By Mr. O'Malley): What was said?

A. I don't know what they said, but they told us to go outside and they would take a vote on it.

Q. Then what happened?

(Testimony of Nello Castagnola)

A. We went outside and they told us to come back in and told us at 12:00 noon they would give us our card to go out.

Q. Very well. Who told you that?

A. One of the representatives of the committee.

Q. Do you know which one made that statement or did all of them make that statement?

A. I couldn't tell you which one.

Q. But that was the substance of their answer, is that correct?

A. Yes.

Q. Now at the conversation was there some discussion with reference to a clearance card?

A. Repeat that, please.

* * *

The Court: Was anything said about a clearance card?

The Witness: Yes, they said we would have to have one to go fishing.

Mr. O'Malley: Very well.

Q. Was anything said about where you could sell your fish?

A. Yes, they said down at Newport.

Q. Was there anything said about selling your fish in San Pedro? [833]

A. They told us just the dealers down there.

The Court: Just the dealers where?

* * *

A. Down in Newport. [834]

* * *

(Testimony of Nello Castagnola)

Q. (By Mr. O'Malley): Was anything said by the committee, any members of the committee, with reference to where you could sell your fish?

A. Yes.

* * *

Q. To your best recollection, who made the statement?

A. The committee. They told us to sell the fish down at Newport.

* * *

Q. (By Mr. O'Malley): Do you remember which member of the committee made that statement?

A. I guess they all talked about it.

Mr. Andersen: I move that that be stricken as not responsive. [835]

Mr. O'Malley: I think it is responsive, your Honor.

The Court: Yes.

Q. (By Mr. O'Malley): That was the substance of your conversation with them? A. Right.

Q. Was anything said at that time——

Mr. Andersen: May it please the Court, I misunderstood your ruling. The witness said "I guess."

The Court: I denied your motion on the basis that in the vernacular this witness apparently when he says "I guess" means "I remember."

Is that what you mean to say or are you guessing now?

The Witness: It is 10 months ago.

(Testimony of Nello Castagnola):

The Court: Is that your best recollection?

The Witness: Yes.

The Court: All right.

Q. (By Mr. O'Malley): Now at this meeting with the committee on June 6th, was anything said about picketing? A. They told us—

Q. Who told you?

The Court: Just answer the question first. Was anything said?

The Witness: Yes. [836]

Q. (By Mr. O'Malley): Now will you tell us who said it, who had a discussion with you about that? Can you tell us who it was?

A. It was the committee that told us every seven days we would have to come in and renew our card and get it punched so we could go back out.

Q. When you say renewing the card, you mean the clearance card? A. The clearance card.

Q. How did you renew your card?

A. They would punch it every time we would picket.

Q. Were there any instructions by the committee as to how your card should be renewed?

A. Yes, by picketing. They would punch the card every time we picketed.

Q. Is that what the committee instructed you at the time? A. Yes. [837]

* * *

Q. (By Mr. O'Malley): I show you this document, which is designated as Government's Exhibit

(Testimony of Nello Castagnola)

7 for identification, and ask you if you have ever seen that document before. A. Yes.

Q. Where did you see that for the first time?

A. I seen this for the first time in the union hall.

Q. What were the circumstances under which you saw it? Tell us how you happened to see it, in other words. A. They gave it to me.

Q. Who gave it to you?

A. The committee.

Q. Can you tell us when that was?

A. No, I couldn't.

Q. Is there any date upon the document which would refresh your recollection?

A. This is the second one I got. I got one before this one.

Q. You got a like document before that, is that correct? [838] A. Yes.

Q. And is there any date upon the document which refreshes your recollection as to the date on which you obtained it? A. 6 and 23.

Q. Would that be June 23rd?

A. That is right.

Q. Of what year? Last year? A. 1946.

Q. 1946? A. Yes.

Q. And you obtained that at the committee hall, at the union hall, is that correct? A. Yes.

Q. What was that document used for?

A. That was our clearance card. That cleared us picketing. That cleared us to come in and sell our fish.

(Testimony of Nello Castagnola)

Q. Now at the earlier meeting did you also obtain a clearance card? You spoke about your first meeting with the union. You said this was the second card you obtained.

A. That is the second one. I don't think I got that one from the union hall. I think I got that on the wharf.

Q. Who did you obtain it from?

A. That I can't remember. [839]

Q. Do you have any recollection as to who you obtained it from?

A. I think they said they were going to use a new system so they took the one I had and give me that one.

Q. Who did?

A. I couldn't tell you.

Q. Do you have any recollection as to whether the first person who gave you this exhibit was in any way associated with the defendant Local 36?

A. He was one of the union men; yes.

* * *

Mr. O'Malley: Government's Exhibit 7 for identification is offered in evidence, your Honor.

The Court: Admitted.

(The document referred to was received in evidence and marked Government's Exhibit No. 7.)

Mr. O'Malley: I would like to read it to the jury. [840]

* * *

(Testimony of Nello Castagnola)

Q. You testified that you did fish during the strike, is that right? A. Yes.

Q. Where did you sell your fish during the strike?

A. Fishermen's Coop, down at Newport.

Q. Newport? A. Yes.

Mr. O'Malley: I believe that is all. Your witness.

Mr. Andersen: No questions. [841]

AUGUSTINO CASTAGNOLA, JR.

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: Augustino Castagnola, Jr.

The Clerk: How do you spell your first name?

* * *

Direct Examination

By Mr. O'Malley:

Q. And you live in San Pedro?

A. Yes, sir.

Q. What business are you in, Mr. Castagnola?

A. Commercial fishing.

Q. How long have you been a fisherman?

A. About five years.

Q. You have fished for the past five years, have you?

A. Except for about two years in the Navy.

(Testimony of Augustino Castagnola, Jr.)

Q. Except for two years during which you were in the Navy you have been constantly in the business of fishing? A. Yes, sir.

Q. What kind of fish do you fish for?

A. Barracuda, sea bass, sardines.

* * *

The Court: Just a moment. When you say what kind of fish, do you mean whether he fishes for the fresh fish market?

Mr. O'Malley: That is right.

Q. Are those species you just referred to, are they a species of fresh fish?

A. Barracuda and sea bass is. Sardines is for the cannery.

Q. Where did you sell your catch, directing your attention to last June of 1946?

The Court: That is the fresh fish we are only concerned with?

Mr. O'Malley: Yes, fresh fish.

The Witness: We were selling them in Newport. [843]

Q. (By Mr. O'Malley): Were you engaged in the fishing operation as a boat owner or as a fisherman working by shares?

A. I was working by shares. I was skipper on the boat but I was working by shares.

Q. Who owns that boat? A. My sister.

Q. Your sister owned the boat?

A. Yes, sir.

Q. What was the name of the boat?

A. Flyer.

(Testimony of Augustino Castagnola, Jr.)

Q. How large a crew did it have?

A. Three men; two including myself.

Q. Who were they?

A. One was Nello Castagnola and one George Castagnola.

Q. Are they brothers of yours?

A. Yes, sir.

Q. When you sold your catch, did you sell it on a share basis?

A. What do you mean by that, sir?

Q. You sold your catch to the dealers in San Pedro, is that what you testified to?

A. Yes, sir.

Q. Or Newport? A. Newport.

Q. I beg your pardon. [844]

The Court: You mean you have always sold it at Newport?

The Witness: No, sir.

Q. (By Mr. O'Malley): I am directing your attention specifically to last June 1946. At that time you were selling your catch at Newport, is that correct? A. Yes, sir.

Q. Did you receive any wages or salaries from the dealers, or was your compensation according to the amount of fish you caught?

A. According to the amount of fish.

Q. Who received the proceeds of it?

A. The Fishermen's Coop.

Q. I think you may have misunderstood my question. Who received the proceeds of the sale of the fish? A. I did.

(Testimony of Augustino Castagnola, Jr.)

Q. How did you distribute that?

A. The boat gets a share, the net gets a share and then each member of the crew gets a share.

The Court: How many shares in the boat?

The Witness: Five. There is one share in the boat, one share in the net, and there is three shares for the men.

The Court: You each get a share, each of the men gets a share?

The Witness: Yes, sir. [845]

Q. (By Mr. O'Malley): Have you ever been a member of this organization which calls itself Local 36?

A. No, sir. [846]

Q. Directing your attention to the first week in June of 1946, did you go out fishing at that time?

A. No, sir.

Q. Why didn't you?

A. I came out of the Navy on May 23rd, I got discharged May 23rd, and we were getting some gear ready around the end of May or the beginning of June.

Q. What time were you ready to fish?

A. We were ready about June 5th or 6th.

Q. Did you go out and fish at that time?

A. We went out June 6th, I think.

Q. And where did you sell your fish?

A. We sold our fish in Newport.

Q. Did you do any picketing at that time?

Mr. Andersen: To which we will object as incompetent, irrelevant and immaterial, for the reasons stated.

(Testimony of Augustino Castagnola, Jr.)

The Court: Yes, I think it is immaterial. Objection sustained.

Mr. O'Malley: May it please the court, I believe it is competent for the government to show the manner of the restriction which was placed upon the operation of these fishermen. I think we are entitled to show just how that restriction was placed upon these fishermen.

Mr. Kenny: I would be delighted to argue that with counsel, but I think it ought to be out of the presence of the [847] jury.

The Court: Yes, I think so.

Mr. O'Malley: Very well.

The Court: Your question was whether or not he did any picketing. I can't see the materiality of whether a particular person did or didn't picket. I think it is immaterial.

Mr. O'Malley: If the court please, the question concerning picketing was directed specifically to allegation (k) on page 7 of the indictment. The government would like to be heard——

The Court: Just a moment. Let me get it.

I think that is correct. I will reverse my ruling on it.

Mr. Kenny: Now, we would like to be heard, your Honor.

The Court: There is a specific allegation here, and it is pretty hard to get around that.

Mr. Kenny: There was a matter we started to discuss earlier today, and if you recall, we adjourned for lunch, and it has not been completed

(Testimony of Augustino Castagnola, Jr.)

yet. I think it goes to the heart—we may have a lot of testimony that may not be material at all.

Mr. O'Malley: It is hard to see how we could prove the conspiracy——

The Court: I will overrule the objection.

Mr. O'Malley: Very well. [848]

The Court: Counsel may argue the matter later on in connection with a motion to strike, which I understand they anticipate making in connection with various matters, anyhow. The objection is overruled.

Q. (By Mr. O'Malley): Mr. Castagnola, during the period of the strike did you do any picketing?

A. Yes, sir. I picketed, I think, twice, once or twice.

* * *

Q. (By Mr. O'Malley): Where did you picket?

A. San Pedro. [849]

* * *

Q. (By Mr. O'Malley): You testified that you fished for fresh fish out of Newport. Was that fishing within the three-mile limit or outside of the three-mile limit?

A. Sometimes inside and sometimes outside.

Q. Mr. Castagnola, you testified that your boat was owned by your sister, is that correct?

A. Yes, sir. [851]

Q. Could you tell us approximately what the value of your boat was?

(Testimony of Augustino Castagnola, Jr.)

Mr. Andersen: To which we object as incompetent, irrelevant and immaterial.

Mr. O'Malley: I think we are entitled to show that these fishermen were in business for themselves, and to show——

The Court: Objection overruled.

Q. (By Mr. O'Malley): Do you have any knowledge as to approximately what the value was?

A. Approximately about \$10,000.

Q. Does that include the gear and other equipment? A. It includes the gear.

Q. That is the entire investment in the boat, is that correct? A. Yes, sir.

Mr. O'Malley: Very well. Your witness.

* * *

Cross-Examination

By Mr. Kenny:

Q. I see. Over there in Newport, the dealer to whom you sold your fish was known to you, was he not, as a dealer who had signed the union contract?

A. That is what I heard.

Q. And he paid you a price for your fish that was the minimum OPA price at that time, did he not, when you took it over there to Newport?

A. I think it was a minimum OPA price, I think it was.

Q. Just one other question to develop the matter of the earnings. You said, Mr. Castagnola, that there were five shares on the boat *Flyer*—the boat

(Testimony of Augustino Castagnola, Jr.)

gets a share, the net gets a share, and each of three men get one share, is that right.

A. That's right.

Q. If you go out fishing for barracuda, and you don't catch any barracuda at all, how was the loss divided, assuming that you received nothing for your catch—do you put your work in?

A. That's right.

Q. And your brother and the other man?

A. Yes.

Q. Do you get paid for that? A. No.

Q. How many trips have you made—you have been in the fishing business now since June 6th last year, how many trips have you made since then?

A. When we fish barracuda we go out daily and come in [854] daily.

Q. When do the barracuda run?

A. April and May, June, July.

Q. So you fished for barracuda in June and July, didn't you? Well, what did you get paid out of your share on those barracuda trips for June and July? A. Out of my share?

Q. What did you get paid for your share?

A. I don't know. I have got nothing with me.

The Court: Do you have an idea?

The Witness: I know approximately, yes; about \$800.

Q. (By Mr. Kenny): For two months work?

A. That's right.

Q. Then what did you do in the fishing business in August, what fish were running?

(Testimony of Augustino Castagnola, Jr.)

A. I tied my boat up and start fishing for mackerel, sardines, out of a purse seine.

Q. You weren't fishing on your own boat?

A. That's right. I went fishing on a purse seine.

The Court: When you went fishing for sardines on a purse seine you went on another boat?

The Witness: Yes.

The Court: As a fisherman for a share of that lay?

The Witness: Yes.

Q. (By Mr. Kenny): You were fishing for a share at this [855] time? A. Yes.

Q. What was that boat? A. St. Christina.

Q. Were you a member——

A. A. F. of L.

Q. Thank you. How many months did you fish for mackerel and sardines? A. Six months.

Q. What did you make while you were fishing there? A. How much I made?

Q. Yes. What did you make a month, or what did you earn?

A. Some months, a couple of months I made \$600, and then I made \$200, share basis. I made about, all together, about \$2,000.

Q. About \$2,000? A. That's right.

Q. That is six months, that brings us up to January. All right. That is 800 and 2,000. Now, what have you been fishing for during the month of February?

A. There is some slack periods in between there. I haven't been doing nothing all this month.

(Testimony of Augustino Castagnola, Jr.)

Q. I see.

The Court: Have you resumed fishing on—what is the [856] name of this boat?

The Witness: The Flyer.

The Court: The Flyer?

The Witness: I am going to.

The Court: You have not since you came off of the sardine catch?

The Witness: No, sir.

Q. (By Mr. Kenny): Then it would be your testimony that you have earned \$2,800 during this time you have been in the fishing industry, since you got back from the Navy, is that right?

A. That's right.

Mr. Kenny: Thank you very much.

The Court: Redirect?

Redirect Examination

By Mr. O'Malley:

Q. You testified you earned approximately \$2,800 since you have gotten out of service, is that correct?

A. Yes, sir.

Q. Did you devote all your time to the fishing industry?

A. Yes, sir.

Q. Were you constantly fishing, or were there some interruptions?

A. Between last June and the first of March it has been constant. [857]

Q. Very well.

The Court: When you fish sardines, do you fish all the time or do you fish by the light of the moon?

(Testimony of Augustino Castagnola, Jr.)

The Witness: Light of the moon, five days off.

The Court: Five days off. Then do you fish mackerel?

The Witness: No, sir; nothing.

The Court: You are tied up?

The Witness: Tied up.

* * *

Q. (By Mr. O'Malley): After the period of the strike did you continue to sell fish at Newport?

A. No sir; San Pedro.

Q. And after the strike you sold fish at San Pedro, is that correct? A. Yes, sir.

* * *

Mr. O'Malley: That is all.

JOSEPH STAGNARO

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

The Witness: Joseph Stagnaro.

The Clerk: And your address?

The Witness: 371 Twelfth Street, San Pedro.

Direct Examination

By Mr. Rubin:

Q. Mr. Stagnaro, what is your business or occupation? A. Fisherman.

Q. How long have you been so engaged as a fisherman? A. Practically all my life.

(Testimony of Joseph Stagnaro.)

Q. Do you own your own boat?

A. Yes, sir.

Q. What is the name of your boat?

A. Sport II.

Q. Out of what port do you fish from, principally? A. San Pedro. [859]

Q. Did you fish from that port during the year 1946? A. Yes, sir.

Q. Are you a member of Local 36?

A. No, sir.

Q. During the month of June, 1946, during the first week in that month, did you fish out of the port of San Pedro? A. First week?

Q. Yes. A. Month of June?

Q. Yes. A. No.

Q. When was the last time prior to the first week of June that you did fish out of the port of San Pedro?

A. Well, it was in May, latter part of May.

Q. The latter part of May? A. Yes.

* * *

Q. (By Mr. Rubin): To whom do you sell the catch? [860] A. The fresh fish markets.

Q. Located in what port? A. San Pedro.

Q. Is that the market to whom you sold your catch when you fished during the month of May, 1946? A. Yes, sir.

Q. Do you know what species of fish were running during May and June of 1946?

* * *

(Testimony of Joseph Stagnaro.)

A. Well, every season the same fish runs those two months.

Q. What fish is that?

A. Barracuda and sea bass.

Q. During what months do these species of fish run?

A. They run May, June, July, August, September.

Q. Were you fishing for those species of fish during those months?

A. I was fishing barracuda.

Q. When did you stop fishing in May, Mr. Stagnaro? [861]

A. I fished up to the beginning of the strike.

Q. And when you say "the strike," what do you mean?

A. When the boats tied up.

Q. At what port were the boats tied up, if you know?

A. Tied up in San Pedro.

Q. I see. Now, after the boats tied up at San Pedro, when was the first time that you went fishing after the commencement of that tie-up?

A. I don't know. It must have been seven or eight days after.

* * *

Q. (By Mr. Rubin): Prior to the time you went fishing, did you ever go to the office of Local 36?

A. Yes.

Q. And did you see anybody there?

A. Yes.

Q. And did you have any conversation with any person there?

A. Yes. [862]

No. 11638

United States
Circuit Court of Appeals
For the Ninth Circuit

LOCAL 36 OF THE INTERNATIONAL FISHERMEN AND
ALLIED WORKERS OF AMERICA, JEFF KIBRE,
GILBERT ZAFRAN, CLIFFORD C. KENNISON, F. R.
SMITH, GEORGE KNOWLTON, OTIS W. SAWYER,
W. B. McCOMAS, HARRY A. McKITTRICK, ARTHUR
D. HILL, C. LLOYD MUNSON, CHARLES McLAUCH-
LAN, ROBERT M. PHELPS, BURT D. LACKYARD,
and RAY J. MORKOWSKI,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
In Six Volumes
VOLUME II
Pages 463 to 942

Upon Appeal from the District Court of the United States
for the Southern District of California
Central Division

FILED
DEC 11 1947

No. 11638

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(Testimony of Joseph Stagnaro.)

Q. And with whom did you have such conversation?
A. I talked to Zafranovich.

Q. And by Zanfranovich, whom do you mean?

A. Zafran.

Q. Do you see him in the court room?

A. Over there (indicating).

Mr. Andersen: Zafran is a contraction of Zafranovich, your Honor.

Mr. Rubin: May the record show that the witness is indicating Mr. Zafran.

Q. (By Mr. Rubin): And who else did you see there, if you recall, Mr. Stagnaro

A. Mr. Knowlton.

Q. Is he in the court room?

A. Right there (indicating), yes.

Mr. Rubin: Let the record show Mr. Knowlton has been indicated.

Q. (By Mr. Rubin): Anyone else?

A. Mr. Smith.

Q. The gentleman to my left? A. Yes.

Mr. Rubin: May the record indicate that Mr. Smith has been pointed out by the witness.

Q. (By Mr. Rubin): Anyone else?

A. I seen some others, but I don't remember who the other fellows were. I am not very much acquainted with them. [863]

Q. Now, did anyone go to the union office with you, Mr. Stagnaro?

A. Yes.

Q. Who was that?

A. It was a fellow the Flyer.

(Testimony of Joseph Stagnaro.)

Q. What was his name?

Q. What was his name? A. Castagnola.

Q. Do you know his first name?

A. Nello.

Q. Nello Castagnola? A. That is right.

Q. Who else, if anyone?

A. Philip Gulyermo.

Q. Anyone else?

A. Another fellow off the boat Vinmark.

Q. Do you know his name?

A. I don't know his last name. His name is Vincent.

Q. There are a lot of Vincents there in San Pedro, aren't there?

A. His last name is Babiko.

Q. Do you know how to spell that?

A. No, I don't.

Q. Did you have a conversation with the men that you found at the union hall?

A. Yes [864]

Q. What was that conversation, Mr. Stagnaro, and please state to the court and jury as best you recall the substance of what each of the persons said, if you can identify them specifically, in other words, who said what?

A. Well, I asked Zafran if the boats were going out, and he said yes, the boats are going out.

We asked them if we could go out, and we don't want to do anything towards the union, you know,

(Testimony of Joseph Stagnaro.)

we want to go out fishing, if there is any possible chance of us guys going out that we won't, you know, get out of line, we would like to follow what they do.

So Zafran said that they had a committee and that the committee would see us. So we want to see the committee.

Q. Where was the committee meeting?

A. The committee was in the back.

Q. Did you recognize any of the persons on the committee?

A. Mr. Knowlton and Mr. Smith.

Q. Did all of you go back to the committee at that time?

A. Yes, we did.

Q. What was said when you all went to visit the committee?

A. Well, the committee told us that the boats was going out and if we stepped outside they would take a vote [865] on us if we could go out.

Q. Then what happened?

A. So we stepped outside for about five minutes. They called us in and said it was okay, they would give us a clearance card to go fishing at Newport.

Q. All right. When they gave you the clearance card, did they give you a card, a clearance card, at that time?

A. No, not right then.

Q. Did they tell you anything else other than we will give you a clearance card?

(Testimony of Joseph Stagnaro.)

A. Well, they said if we didn't bring the fish to the San Pedro dealers and a couple of markets down there in Newport, that we could bring the fish to Newport and Santa Monica and Redondo.

Q. But not to San Pedro or to a couple at Newport?

A. That is correct.

Q. What else did they tell you?

A. The clearance cards are good for five days.

Q. After the five days, what did you have to do?

A. Come back and do a little picket duty.

Q. Did they tell you for how many days you had to do picket duty or how long you had to do picket duty?

A. For six hours, I think.

Q. Did you go out fishing after you received that clearance card? [866]

A. Yes, we did.

Q. For how many days did you go out fishing?

A. I think five days.

Q. Then did you return?

A. Yes, we did.

Q. Then did you do picket duty?

A. Yes, I picketed twice.

Q. You picketed twice? A. Yes.

Q. What did your picketing consist of, Mr. Stagnaro?

A. I went down at night time, about six o'clock at night, until 12:00 o'clock.

Q. You went down where?

A. Down to the fish market.

(Testimony of Joseph Stagnaro.)

Q. What did you do when you went down there?

A. I sat in a car.

Q. That was your picket duty, is that right?

A. That is right.

Q. Did anybody come around and check up on you as to whether or not you were walking your beat?

A. Not that I remember.

Q. What did you do the next day?

A. The next day I think we put the nets on board, or we had them on board and left again.

Q. After performing your picket duty in the manner in [687] which you described, did they punch your card? A. Yes.

Q. Who punched the card, if you recall?

* * *

A. Tommy Sawyer.

Q. Do you see him in the court room?

A. I see him when I come in. There he is.

Mr. Rubin: Let the record show that the defendant Otis W. Sawyer, otherwise known as Tommy Sawyer, has been indicated.

Q. Where was Mr. Sawyer at the time your card was punched?

A. He was down there on the dock there.

Q. On the San Pedro Fish Wharf?

A. Yes.

Q. And did you go out fishing after he punched your card?

A. We went out that afternoon.

(Testimony of Joseph Stagnaro.)

Q. Did you deliver any fish to any of the San Pedro dealers during that period?

A. No, sir.

Q. Did you deliver any fish to the dealers in Newport [868] who were mentioned as not delivering any fish to during that period?

A. No, sir.

Q. I show you what has been marked as Government's Exhibit No. 8 for identification and ask you if you have ever seen that document before.

A. That is my clearance card.

* * *

At this time the government offers Government's Exhibit 8 for identification into evidence.

The Court: Admitted.

(The document referred to was received in evidence and marked Government's Exhibit No. 8).

Q. (By Mr. Rubin): I call your attention to Government's Exhibit No. 8 and specifically to the three punch marks and ask you if [869] your card was punched three times.

A. It is marked three times.

Q. Now did you picket three times?

A. No, one time I paid for one because I could not make it down there.

Q. Who asked you for money instead of picketing?

A. I don't remember.

(Testimony of Joseph Stagnaro.)

Q. To whom did you pay the money?

A. I paid it to somebody in the office there. I don't remember who he was.

Q. In what office?

A. In the union office.

* * *

Q. The time that you couldn't picket, did you have a conversation with someone at the union office with respect to your not being able to picket?

A. Yes.

Q. What office was that conversation had at?

A. In the office of the local there.

Q. Do you remember with whom you had this conversation?

A. No. The man I paid I don't remember who I paid.

Q. What did you tell the man when you went there?

A. I told him if we could go out, you know, I didn't want to picket, that some of the boys were paying and I would like to pay and not go on picket.

Q. What did he say?

A. He said all right.

Q. So what did you do?

A. I paid him.

Q. How much did you pay him?

A. \$4.00.

Q. And after you paid him the \$4.00 did he then punch your clearance card?

A. I don't know if he punched it or the other man punched it. That is a long time ago, you know.

(Testimony of Joseph Stagnaro.)

Q. Now in the ordinary course of your fishing operations, would you fish during the entire month of June?

A. Yes.

Q. During June of 1946 you commenced to fish approximately what date?

A. Seven or eight days after the 1st.

Q. Did you have your gear and equipment prior to that time?

A. I had it on the beach; yes.

* * *

Q. —why did you not fish between the 1st and the 8th of June, 1946?

* * *

The Witness: I didn't want to go out there during the strike.

* * *

Q. Just state to the court and jury, Mr. Stagnaro, why you did not go out fishing between the 1st and 8th of June, 1946?

A. I don't want to go out during a strike. You get into lots of trouble or something like that.

Mr. Andersen: I move that the last be stricken may it please the court.

Mr. Rubin: We will develop it. We submit, if your Honor please, that the witness has a right to testify as to what his state of mind is.

The Court: The previous question, the objection to it was overruled on the ground that it was incompetent. His answer indicated his state of mind and you have a right to ask him. The motion is denied.

(Testimony of Joseph Stagnaro.)

Q. (By Mr. Rubin): What did you mean by getting into a lot of trouble there, Mr. Stagnaro?

A. You never can tell during a strike?

* * *

Q. Do you remember the name of the market at Newport Beach which the union people told you not to sell fish at?

A. They told me we could sell fish at the Western Cannery or the Co-op down there.

Q. Do you know the name of the market where you were not supposed to sell fish?

A. Yes, Horman's and Bayside.

Q. Do you know who operates the Bayside Market?

A. I never did sell no fish to them, but I know who operates it. [874]

Q. Were any of the members of your crew members of Local 36?

A. Not then.

Q. During this period? A. No.

The Court: Who was your crew?

* * *

The Witness: The Castagnola boys was on it before and after. After that I had the kid with me and a brother-in-law of mine, that is all. There was three of us. There was four at first.

Q. (By Mr. Rubin): Mr. Stagnaro, you say you have been fishing in the Southern California waters for many years?

A. I have been fishing practically all of my life.

The Court: Here?

The Witness: In Southern California; yes.

(Testimony of Joseph Stagnaro.)

Q. (By Mr. Rubin): And when you fish for fish, the species of which are delivered to the fresh fish market, how far offshore do you have occasion to go?

A. Well, it depends. Sometimes the fish might be out eight or 10 miles, sometimes they may be in within a mile of the beach, sometimes closer than that. [875]

* * *

Q. Approximately what is the value of your boat, Mr. Stagnaro, together with the rigging or net?

A. \$5000 to \$6000.

* * *

Q. Mr. Stagnaro, during the year 1946 were you ever employed by the fish dealers in the San Pedro fresh fish wharf?

A. What do you mean "employed?" [876]

Q. Did you ever work for them?

A. I worked for them all the time, different markets, selling fish to different markets.

Q. When you say you worked for them, do you mean you worked for them in what capacity?

A. We catch the fish and sell them the fish?

Q. So that your working for them consists of selling them the fish, is that correct?

A. That is right?

Q. Did you ever work for them on a salary?

A. No, sir.

Q. Do the fresh fish markets at San Pedro have a right to tell you where to go and what types of fish to catch and when to catch them?

A. Not me anyway.

(Testimony of Joseph Stagnaro.)

Mr. Rubin: That is all, your Honor.

* * *

Cross-Examination

By Mr. Kenny:

Q. Mr. Stagnaro, you are not a member of the union but you are a member of the Small Boat Owners Association, aren't [877] you?

A. That is right.

Q. And your relationship with the union members have been very friendly all during the years?

Mr. Schwartz: Was that question answered?

The Court: He nodded his head vertically which ordinarily is taken to be an affirmative response.

Q. (By Mr. Kenny): When you didn't go fishing those first six days in June, in addition to the fact of there being a strike on you had other reasons for not going fishing, didn't you? Do you remember the weather and the state of the moon, and where fish would be available or suitable at that time?

A. No, the moon hadn't got anything to do when we are fishing barracuda. The more moon the better.

Q. What about the weather during that time?

A. The weather?

Q. Did you know where the fish were running during those first six days?

A. When we knocked off we were catching lots of fish.

Q. By the way, the name Stagnaro, are you related to the fish dealer Stagnaro in Santa Cruz?

A. No, sir.

(Testimony of Joseph Stagnaro.)

Q. Have you any relatives by marriage or blood who are fish dealers. [878]

A. No, sir.

Q. This time that you were picketing at night, you were picketing at night by—you were also working on your nets, weren't you? Wasn't there an arrangement so that you could be tending your nets that night?

A. That is right.

Q. And you delivered in your lifetime out in the channel here fish into the port many times, haven't you?

A. Yes, sir.

Q. Whenever the barracuda are running off Newport you deliver them in there, isn't that right?

A. That is right.

Mr. Kenny: That is all.

* * *

The Court: Call the jury down.

(The jury returned to the courtroom at 11:00 o'clock a. m.).

The Court: Usual stipulation?

Mr. Margolis: Yes, your Honor.

Mr. Garrett: Yes, your Honor.

Mr. Dixon: Yes, your Honor.

The Court: You have a motion to make on behalf of certain defendants, Mr. Margolis?

Mr. Margolis: Your Honor please, I understand from the Government that there will be no question with regard to the identification of the follow-

ing named defendants for the next couple of days at least, maybe longer: McComas, McKittrick, Hill, Munson, McLauchlan, Morkowski, Lackyard, Phelps.

We have made arrangements with each of these defendants, in the event that they are excused by the Court, to be contacted each night so that they are notified one day, that is, one evening, that they should be in court the next morning so that they can be in court the following morning.

On that basis we understand that any time we are told one day that they are wanted the next day they will be produced.

We ask that the defendants named be excused from attendance [882] at the trial in order that they may work, go fishing.

The Court: They are actually engaged in fishing?

Mr. Margolis: That is right.

Mr. Dixon: We have no objection to the motion, your Honor.

The Court: Very well. Mr. McComas, Mr. McKittrick, Mr. Hill, Mr. Munson, Mr. McLauchlan, Mr. Morkowski, Mr. Lackyard and Mr. Phelps.

Mr. Margolis: May I correct one thing? Mr. McKittrick will stay. He is not engaged in fishing. The others are.

The Court: Mr. McKittrick will stay?

Mr. Margolis: Yes.

The Court: You do not make the motion on behalf of him?

Mr. Margolis: No.

The Court: Mr. Morkowski I understand is engaged in an airplane plant in San Diego.

Mr. Margolis: That's right.

The Court: Each of you have heard the motion made by your counsel that you be excused temporarily in order that you may resume your occupation of fishing and that you will abide the order of the Court to return when needed. Do each of you understand the motion? (Assent).

Is there anyone who does not understand it? (No response).

Is that agreeable to each of you? (Assent). [883]

Very well. The order of the Court will be that the motion to excuse Mr. McComas, Mr. Hill, Mr. Munson, Mr. McLauchlan, Mr. Morkowski, Mr. Lackyard and Mr. Phelps from attendance upon the trial from day to day is granted until the further order of the Court. Each of you, however, are ordered and directed to keep in touch with your counsel so that the Government upon request can have your presence when needed upon a notice of at least the previous evening; that is to say, if they should want you tomorrow they will notify your counsel this evening.

Mr. Margolis: That is satisfactory.

The Court: Do all of you understand that? (Assent).

Very well. That will be the order of the Court.

Mr. Margolis: They may leave now?

The Court: They may leave now. [884]

BAPTISTE FALCONE

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name, please?

The Witness: Baptiste Falcone.

* * *

Direct Examination

By Mr. O'Malley:

Q. Your name is Baptiste Falcone, is that right?

A. Yes.

Q. You live in San Pedro?

A. Yes, sir.

Q. And what business are you in, Mr. Falcone?

A. Fisherman.

Q. How long have you been in that business?

A. Practically all my life, I guess.

Q. Are you a member of defendant Local 36?

A. No, sir.

Q. What size boat do you fish on?

A. Forty footer.

Q. What is the name of the boat?

A. Stella Maris.

Q. Do you have any ownership in the boat?

A. Partnership with my brother.

* * *

Q. (By Mr. O'Malley): Are you the skipper of the boat?

A. Yes, sir.

Q. What do you fish for, what kind of fish.

A. We fish mostly for shark and a few months in the summer for sea bass.

(Testimony of Baptiste Falcone)

The Court: Is that what is called—you fish for the fresh fish market?

The Witness: Fresh fish market.

Q. By Mr. O'Malley: What do you do with the carcass of the shark? [886]

A. We sell that to the fresh fish market, and the livens we sell to brokers.

Q. In what fishing port?

A. San Pedro. [887]

* * *

Q. Can you point to Mr. Sawyer in the court room?

A. Right back there (indicating).

(The defendant Sawyer stood up.)

Q. (By Mr. O'Malley): Is that the gentleman you refer to? A. Yes, sir.

Q. Can you tell us what was said by Mr. Sawyer?

A. Well, he came—there was a bunch of our fellows making a tanning tank to cure nets; he said, "You fellows have to picket to go out again, or else you have to stop fishing." So he told us to go to the office and see the officials over in the office to get a clearing card.

Q. By the office what do you mean. [888]

A. Local office.

Mr. Kenny: Your Honor, I would ask your Honor at this time, if you are disposed to instruct the jury as to the limited effect of the evidence regarding picketing and similar activities.

The Court: Yes, I think I shall make a statement to the jury.

(Testimony of Baptiste Falcone)

As indicated at the commencement of the trial, the defendants here are accused of a conspiracy to violate the Sherman Anti-trust Law. That is the only crime that they are accused of, and any evidence that is admitted is admitted because in my judgment it is material or competent or relevant to the allegations of the indictment concerning the commission of that offence. The defendants are not on trial for picketing or boycotting, or any other activity, and those activities are admissible in connection with this case because and only because they are relevant or material or competent to aid in your determination, if the case goes to you ultimately, at to whether or not they are guilty of a conspiracy. Is that clear to you?

Very well. [889]

Mr. O'Malley: I think it might be appropriate at this time—your Honor indicated the portion of the indictment to the jury under which this evidence concerning picketing is brought. Specifically directing your Honor's attention to Allegation (k) on page 7 of the indictment.

The Court: On page 12 of the indictment it charges—this is what is known as the charging part of the indictment——

“Begining some time prior to May, 1946, the exact date being unknown to the Grand Jurors, and continuing thereafter up to and including the date of the return of this Indictment, the defendants named herein, together with other persons to the Grand Jury unknown, have knowingly and continuously engaged in a wrongful and unlawful combina-

(Testimony of Baptiste Falcone)

tion and conspiracy formed and carried out in part within the Southern District of California, Central Division, to fix, determine, establish, and maintain arbitrary, artificial and non-competitive prices for the sale to dealers of fresh fish and crustaceans caught in the fishing area, and to prevent dealers who do not agree to pay said prices from obtaining, selling or shipping any fresh fish or crustaceans, which combination and conspiracy has been in restraint of the aforesaid trade and commerce, in violation of Section 1 of the Act of Congress of July 2, 1890, [890] as amended (26 Stat. 209, 15 U. S. C., Section 1), commonly known as the Sherman Act."

That the conspiracy is alleged to be:

"(a) agree to fix minimum prices to be charged by the fishermen for the sale of fresh fish and crustaceans caught by said fishermen in the fishing area and thereafter sold by the fishermen to dealers."

Do you want me to read all those?

Mr. O'Malley: Specifically Allegation (k).

The Court: They go on down through the alphabet, different items and different things that have been alleged to have been done by fishermen as part of the asserted agreement and conspiracy, (k) being:

"(k) agree to prevent fishermen who are not members of Local 36, IFAWA, from fishing and delivering any fresh fish or crustaceans caught by said fishermen to anyone other than a dealer signing the aforesaid written contract and only to such dealer after said non-member fishermen had picketed non-

(Testimony of Baptiste Falcone)

signing dealers, or in lieu thereof, had paid to Local 36, IFAWA a stipulated picket fee."

Mr. O'Malley: Thank you, your Honor. I think that takes care of it very adequately.

The Court: Does that conform to your request, Judge Kenny?

Mr. Kenny: It helps. We still don't waive our objection, however.

The Court: I understand, but you asked me if I was going to make a statement.

Mr. Kenny: It is a half loaf, as we see it, and we are grateful for that, your Honor.

The Court: Whether it is a half loaf or whether it isn't, the jury will be instructed to disregard that statement by counsel. It is a statement of what the charge is and the purpose and materiality of the evidence as it comes in.

In other words, you are not to get diverted on the matter of whether or not somebody did or didn't carry a picket on a certain date. That isn't what was charged here. It is whether or not it is a conspiracy and an agreement and combination to restrain trade as charged in the indictment.

Q. (By Mr. O'Malley): You testified that you had a conversation with Mr. Sawyer?

A. Yes.

Q. What did you then do?

A. Well, he told us to go to the union office to get a clearance to go out fishing again.

Q. Did you do that?

A. Yes, sir.

(Testimony of Baptiste Falcone)

Q. Where did you go?

A. To the union office.

Q. By the "union office" do you mean the office of this organization which calls itself Local 36?

A. Yes.

Q. Where is that office located?

A. The old Southern Pacific slip. That would be Berth 73.

Q. At San Pedro? A. Yes, sir.

Q. Who did you see when you got to the union hall?

A. Mr. Smith was there and Mr. Knowlton, Gilbert Zafranovich and a few other fellows were there.

Q. Will you point to Mr. Smith?

A. He is on the far side in the brown suit.

Q. Indicating Mr. Smith.

And did you see Mr. Zafran?

A. There he is back there.

Q. The gentleman in the sport coat?

A. Yes.

The Court: And who else did you say?

The Witness: Knowlton, the fellow in the white shirt.

Q. (By Mr. O'Malley). What was said to you by these gentlemen, if anything?

A. We went in and asked them for a clearance card, so they said they had to call a little meeting. We had to step outside for a few minutes to see what they would decide, and finally they said that they would give us a card according we did picket duty.

(Testimony of Baptiste Falcone)

Q. You could get a clearance card if you did picket duty?

A. Yes, sir.

Q. Was there anything said about where you could sell your fish?

A. On the dock down there Tommy said we could either take the fish to Newport and deliver it to the Cooperative, Western Cannery and Poladini, but other boats were down there told me, don't go there, they don't take shark carcasses, and it will save you a lot of time and trouble. So I didn't bring any down there.

Q. What did you do with the shark carcasses during the period of the strike?

A. Threw them overboard, the biggest part of them.

Q. You were unable to sell them during the period of the strike?

A. Yes, sir. [894]

* * *

Q. Did you sell the fish at San Pedro?

The Witness: No, sir.

The Court: Did you sell any fish in June?

* * *

The Witness: I sold some livers.

The Court: You sold some livers?

The Witness: Yes.

Q. Are those sold to the fresh fish dealers?

The Witness: No, sold to a broker.

(Testimony of Baptiste Falcone)

The Court: Did you sell any fresh fish at all in June?

The Witness: No.

* * *

Q. (By Mr. O'Malley): Was anything else said by any of the defendants that you have not indicated?. [896]

A. Not that I recall.

Q. You started to tell us about another conversation. Could you tell us what that conversation was?

The Court: Tell us where it was and who it was with.

* * *

A. Later on we was talking with Tommy one day——

Q. What Tommy do you mean?

A. Sawyer. He says, "If you guys don't picket we might make it tough for you."

* * *

The Court: Where was the conversation?

The Witness: Down on the fish dock.

* * *

Q. (By Mr. O'Malley): Was that during the course of the strike?

A. Yes.

* * *

Q. Will you finish the conversation?

A. He came to us and he says, "If you don't picket you might not go fishing again."

So I said, "Why we will go picket as long you leave us work."

(Testimony of Baptiste Falcone)

That is when we got that card, we went out fishing and we did the picketing.

Q. Was that the substance of your conversation?

A. Yes.

Q. Mr. Falcone, have you ever been employed by any fish dealer?

A. No, sir.

Q. Do you work under their direction and control in any way?

A. No, sir; we are strictly an independent boat.

Q. You don't receive any wages or salary?

A. No, sir, not unless we get the fish we don't get no salary.

Q. Is your compensation paid—how is your compensation paid for your fishing?

A. We sell the catch and then at the end of the week when we get our slips we divide it, one share for myself, one share for the boat, one share for the gear and one share for [898] each member of the crew.

Q. And if there is a loss, who bears the loss?

A. I bear the loss.

Mr. O'Malley: Your witness.

Cross-Examination

By Mr. Kenny:

Q. Mr. Falcone, you are not a member of the union but you are a member of the Small Boat Owners Association, aren't you?

A. Yes.

Q. On occasion you haul your fish, don't you, into Los Angeles and sell your shark carcasses to Los Angeles dealers?

(Testimony of Baptiste Falcone)

A. No, sir.

Q. You never do that?

A. No, sir. I have no facilities to haul them in the first place.

Q. Are you always able to sell your shark carcasses, that is, you sell your livers to brokers?

A. Yes.

Q. Shark liver is used for vitamin pills?

A. That is separate. The carcasses we are always able to sell. If lots of them come down the price fluctuates down to 3 or 4 cents, but we still sell them.

Q. You have never had the experience in not being able to dispose of the shark carcass?

A. No, sir.

The Court: How about the other fresh fish you get?

The Witness: That is easily sold.

The Court: Easily sold?

The Witness: Sure.

Q. (By Mr. Kenny): The other fish you catch are the large sea bass?

A. Sea bass.

Mr. Kenny: That is all. [905]

* * *

Mr. Garrett: Do you know Mr. J. DiMassa, one of the dealers who testified here?

A. Yes.

Q. Have you ever been advanced any money by any of the fish dealers?

* * *

A. No, sir. [906]

* * *

NICK BOGDANICH

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Nick Bogdanich.

* * *

Direct Examination

By Mr. Rubin:

Q. What is your business or occupation?

A. Fishing.

Q. How long have you been engaged in fishing?

A. Since 1921. I have been fishing all the time.

Q. Out of what port do you operate?

* * *

A. San Pedro. [915]

Q. How long have you been operating out of San Pedro?

A. Since 1921.

Q. Do you own your own boat?

A. Now, yes.

Q. How long have you owned your own boat?

A. Well, I built it in 1940.

Q. What is the name of it?

A. It was the Georgie Boy.

Q. The Georgie Boy?

A. The first one then I got——

Q. What is the name of your other boat?

A. Baby Clipper.

The Court: Do you have both of them now?

The Witness: No.

(Testimony of Nick Bogdanich)

The Court: You sold the Georgie Boy and now you have the Baby Clipper?

The Witness: That is right.

Q. (By Mr. Rubin): What kind of fish do you fish for, Mr. Bogdanich?

A. At that time I fish for barracuda.

Q. When you say "that time" what time did you refer to?

A. It was June.

Q. June of 1946? A. Yes. [916]

The Court: Were you fishing with the Georgie Boy then or the Baby Clipper?

The Witness: I was fishing with the Baby Clipper.

Q. (By Mr. Rubin): And to whom did you sell your fish in 1946?

A. Well, when it wasn't a strike we fished in San Pedro; when there was a strike we fish in Newport.

Q. Prior to the strike to whom did you sell your fish in San Pedro?

A. I bring the last fish in on Friday and I sell the fish two days before the strike.

Q. To whom did you sell that fish?

A. I remember I sell it to Ocean Market.

Q. Ocean Fish Company? A. Yes.

Q. Is that in San Pedro?

A. In San Pedro.

Q. Now after the two days before the strike, when did you stop fishing?

A. Well, because somebody say there was strike.

(Testimony of Nick Bogdanich)

Q. I see. Did you fish during the month of June at all?

A. Yes, I think so. We bring the fish to Newport.

* * *

Q. Now during the month of June, Mr. Bogdanich, did you go to the office of Local 36.

A. Yes, I go to picket.

Q. Did you go to the office of Local 36? Just answer that question yes or no.

A. Yes.

Q. Now did you talk to anybody there [918]

* * *

A. Yes.

Q. Who did you talk to?

A. To strike Comittee.

Q. And do you know who was on that strike committee?

A. I never seen before those guys.

Q. You never saw those persons before?

A. That is the first time I seen them in the strike committee.

Mr. Margolis: I move to strike the witness' testimony with regard to the strike committee on the ground that there is insufficient foundation to show that this witness knows what the committee was.

The Court: Motion denied.

Mr. Margolis: I would like to take the witness on voir dire.

The Court: No. Counsel is trying to get his voir dire in now.

(Testimony of Nick Bogdanich)

Q. (By Mr. Rubin): Did you talk to anyone at that time that is in the courtroom now?

A. I see Mr. Smith over there before. [919]

* * *

Q. (By Mr. Rubin): Mr. Bogdanich, when you went to the office of the union, who was the first person that you talked to, if you talked to anyone there?

A. Well, I asked Mr. Zafranovich how the chance to go fishing is, and then Zafranovich, he told me, "You have to do picketing, so many days picketing."

"All right."

Then I asked him who I have to see to have a clearance. He told me to go see the union office and find out from the strike committee.

Q. Where did this conversation with Mr. Zafran take place? A. I don't know.

Q. Where did you see him when you had this talk with him?

A. I seen him with the fish market.

Q. So that after that did you go to the union office? A. Next day.

Q. The next day? A. Yes.

Q. And did you talk to the people who were there? A. Yes.

Q. Will you again tell us who you saw there that you recognize in the courtroom? [921]

A. I don't know. I don't see no guy.

Q. Do you recognize anybody here who was there?

(Testimony of Nick Bogdanich)

A. Not in the office. I seen Mr. Smith and I seen——

* * *

Q. Did you see Mr. Smith at the meeting there in the union?

A. No, I no see him in the union hall. I see him in the fish market.

Q. Did you have a conversation with him in the fish market? A. How you mean?

Q. Did you talk with him at the fish market when you saw him? A. Yes.

* * *

Q. Now will you tell us what was said when you talked [922] with him at the fish market?

* * *

Q. Three days after the strike you talked to him?

A. Yes.

Q. Now what did you say to Mr. Smith and what did he say to you at that time?

A. He sold me, "You go fishing at Newport." That is all he told me.

Q. He said "you go fishing in Newport"?

A. Yes.

Q. Did you say anything else to him at that time?

A. Well, I asked him for permission—he told me they have to have picketing in union office. They give you a clearance and then you can go fishing. That is all he told me.

Q. Now you testified you went to the union office, is that right? A. Yes. [923]

(Testimony of Nick Bogdanich)

Q. Did anybody there give you anything?

A. Give me clearance.

Q. After you got this clearance, did you go fishing?
A. Next day I go fishing.

Q. Next day you went fishing? A. Yes.

Q. And where did you take your fish that you caught?
A. Over to Newport.

Q. And when you got to Newport did you show that card to anybody?
A. Yes.

Q. Do you know whether or not the person you showed the card to was a member of the union?

A. He is no more member of the union. He was a market man's brother.

Q. A market man's brother there at Newport?

A. Yes.

Q. Did you in fact do any picketing during the strike?
A. Yes.

Q. How many times did you picket, Mr. Bogdanich?

A. I picketed four days straight.

Q. You picketed four days straight?

A. I worked on the boat then I picketed at 6:00 o'clock in the afternoon to 10:00 at night.

Q. After you did picket duty, did you go fishing?

A. Yes, I got ready the boat and I go fishing.

Q. After you went fishing did you do any picket duty after that?

A. I stayed down below three days, then come one day to make the four hours. I go every three days.

(Testimony of Nick Bogdanich)

The Court: He said before that he picketed four days after he had finished his fishing on each of those days. Wasn't that your answer?

The Witness: Yes.

Q. (By Mr. Rubin): You are not a member of Local 36? A. No.

Q. Do you receive any salary or wages from any of the fish dealers? A. No.

Q. Do you work for any of the fish dealers?

A. I fish for them.

Q. You fish for them? A. Yes.

Q. Do the fish dealers have the right to tell you where to go and what fish to catch and when to catch it? A. No.

Mr. Margolis: Just a moment. We move to strike any answer as calling for a conclusion of the witness.

Mr. Rubin: If he knows.

The Court: Objection overruled. [925]

* * *

Q. Fish dealers have a right to tell you when to fish?

A. They never say anything to you. If you like to go fishing, you go; if not, you stay home.

Q. You can go fishing or you can stay home?

A. Like I feel like it. [927]

* * *

Cross Examination

By Mr. Kenny:

Q. You testified this morning that you customarily delivered your fish at San Pedro. Is it not a fact that for many years you have also delivered fish to Newport Beach? [933]

(Testimony of Nick Bogdanich)

A. Yes, we used to deliver fish to Newport Beach. Sometimes we deliver fish to Santa Barbara.

Q. Sometimes in Santa Barbara?

A. Yes. Sometimes we go, like the season, like before Christmas we fish at Santa Barbara, we deliver fish at Santa Barbara.

Q. If the fish are running you take them into Newport Beach?

A. Well, if it is the wartime we fish at Newport because San Pedro was closed. We fished at Newport.

Mr. Kenny: That is all. [934]

* * *

ROMOLO CHIGI,

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: Romolo Chigi.

The Clerk: Your address?

The Witness: 2561½ Fourteenth Street, San Pedro.

Direct Examination

By Mr. Rubin:

Q. What is your business or occupation, Mr. Chigi? A. Fisherman. [939]

Q. How long have you been fishing?

A. Since 1923.

Q. And where do you fish?

(Testimony of Romolo Chigi.)

A. Fish in big boat, San Antonio IV, in purse seine.

Q. For how long? A. Since 1946.

Q. Until 1946? A. Yes, sir.

The Court: Since 1946, he said.

Q. (By Mr. Rubin): During May of 1946 what were you fishing on?

A. I start fishing around 17th or 18th May for barracuda. [940]

* * *

Q. And on what boat were you fishing?

A. Zene.

Q. Do you own that boat? A. Yes, sir.

Q. And where would you sell the fish that you caught on the Zene?

A. Every market, down at San Pedro.

Q. At San Pedro? A. Yes.

The Court: That is the fresh fish market?

The Witness: Fresh fish market.

Q. (By Mr. Rubin): In the month of June, 1946, do you know whether or not there was a strike in San Pedro?

A. Yes, I do. We were talking on the wharf there was going to be a strike.

Q. How long in advance of the strike did you know the strike was going to take place?

A. Probably a week before the strike go on.

* * *

Q. (By Mr. Rubin): Do you know the day of the week the strike took place?

A. I don't understand very well.

(Testimony of Romolo Chigi.)

Q. Do you know what date was the last day that you went fishing before the strike took place?

A. Yes, sir, I do.

Q. What day of the week was it?

A. Monday.

Q. What happened on Monday?

A. Well, there is a picket line down at the wharf.

Q. The strike took place on Monday?

A. Monday, 6:00 o'clock.

Q. When was the last time you went fishing before Monday? A. Sunday night.

Q. What were you fishing for Sunday night?

A. Barracuda.

Q. Where did you bring the barracuda?

A. I bring it to the market.

Q. And what did you do with the fish after you got it to the market on Sunday night?

A. I sell it to Ocean and I brought three boxes of fish, and I sell them about 4:30 in the morning.

Q. Is that to the Ocean Fish Company? [942]

A. Ocean Fish Company. I lose most of the fish. I kind of scared, I hook them up, it is no good, most of the fish go home.

Mr. Anderson: I didn't understand it.

The Court: Read it, Mr. Reporter.

(The record referred to was read by the reporter, as follows:

("A. I sell it to Ocean and I brought three boxes of fish, and I sell them about 4:30 in the morning.

(Testimony of Romolo Chigi.)

("Q. Is that to the Ocean Fish Company?

("A. Ocean Fish Company. I lose most of the fish. I kind of scared, I hook them up, it is no good, most of the fish go home.")

The Witness: Go overboard.

Mr. Rubin: Go overboard. All right.

Q. Did you go fishing the next day?

A. No, sir.

The Court: Let us understand that answer. Most of the fish, kind of scared and the fish go overboard? What do you mean by that? I do not think we quite understand your answer.

The Witness: Well, I come with fish on Sunday night. It was Monday morning.

The Court: You came in Monday morning?

The Witness: Monday morning I know the picket line was in there at 6:00 o'clock. [943]

The Court: 6:00 o'clock Monday morning?

The Witness: Yes.

The Court: Yes?

The Witness: I tried to sell the fish because I have the fish and I hate to throw them away, and it was a little better than a hundred dollars of fish. I tried to sell it and I got excited.

The Court: You got a sign?

The Witness: Excited, and I lost the fish. I no put the link good around the box and when it was half-way to go to the wharf the fish is gone, most of them overboard, some fall on the deck of the boat.

(Testimony of Romolo Chigi.)

The Court: That was an accident?

The Witness: An accident.

The Court: In unloading your fish from the boat to the wharf?

The Witness: Yes.

The Court: You had an accident and your fish went overboard?

The Witness: Yes.

The Court: All right.

Q. (By Mr. Rubin): Now when was the next time you went fishing after that Sunday night?

A. I believe about 10 days after. More than 10 days, [944] I don't remember exactly; maybe 10, 11 or 12, something like that.

Q. During that 10 days, Mr. Chigi, did you have any talk with anyone who you see in the courtroom now? A. Yes, I did.

Q. Who did you have a talk with?

A. Mr. Smith, Mr. Tom——

Q. Mr. F. R. Smith over there?

A. Yes, sir.

Q. And Mr. Tom Sawyer over here?

A. Yes.

Q. Who did you talk to first? A. Tom.

Q. When did you talk to him with respect to the number of days after the strike started?

A. Well, I believe it was about 7, 8 days after the strike was on.

Q. Seven or eight days after the strike was on you talked to him?

A. I believe, I don't remember exactly the day, something like that.

(Testimony of Romolo Chigi.)

Q. Where was Mr. Sawyer when you first talked to him? A. Down on the wharf.

Q. Who else was there? A. Mr. Smith.

Q. Was he with Mr. Sawyer then?

A. Mr. Smith was sitting inside the car, Mr. Sawyer was outside the car.

Q. Now what did you say to Mr. Sawyer and what did Mr. Sawyer say to you?

* * *

The Court: You talked to Mr. Sawyer first?

The Witness: Yes.

The Court: All right.

Q. (By Mr. Rubin): What did you say to Mr. Sawyer when you first talked to him? [946]

* * *

Q. What did he say to you?

A. He says, well, you can have no clear card because you got no picket.

* * *

Q. What else did he say to you then?

A. He said to me, he says, why I go out fishing last Sunday night when nobody else go out fishing?

Q. What did you say in answer to that?

A. Well, I say I need the money and I go out fishing. That is the only reason.

Q. What did he say, if anything?

A. He say I do something wrong, not supposed to go out fishing.

Q. Did you have any other conversation, or any other talk, with Mr. Sawyer then?

(Testimony of Romolo Chigi.)

A. No, that is all. I just go over there and ask him for the clear card.

Q. Did you talk to Mr. Smith?

A. He sent me to Mr. Smith and he talking to me about the clear card.

Q. Mr. Sawyer then took you to see Mr. Smith?

A. Yes. [947]

Q. Did you have a talk with Mr. Smith?

A. Yes.

Q. What did you ask Mr. Smith?

A. Same question.

Q. What did Mr. Smith tell you?

A. He say no.

Q. No what? A. No clear card for me.

Q. What did you say to him, if anything?

A. I say why? Everybody else go fishing, catching fish. I got the boat, I got the net, why should I stay home?

Q. What did he say?

A. He said, no clear card because I did something wrong that night.

Mr. Andersen: I can't hear that.

The Court: Because he went out that night.

Q. (By Mr. Rubin): Did you get a clear card?

A. I got it after.

Q. Did you get a clear card then?

A. After.

Q. No, at that time did you get one?

A. Not that time.

Q. When did you next talk to Mr. Sawyer?

A. About a couple of days. [948]

(Testimony of Romolo Chigi.)

Q. Where did that talk take place?

A. Down at the wharf in the gang.

Q. Who was with Mr. Sawyer that time?

A. Some of the other fellows.

Q. What did you say to Mr. Sawyer then?

A. I asked him again, can't I have the clear card.

Q. What did he say to you?

A. He said, well we give you the clear card you do picket like the rest of the boys.

Q. What did you say?

A. I said, yes I am going to picket.

Q. Did he say anything else to you then?

A. No.

Q. What did you do then, Mr. Chigi?

A. I go start in picketing.

Q. Did you get a clear card? A. No, sir.

Q. You didn't get a clear card then?

A. No, sir.

Q. You started to picket.

A. I started to picket.

Q. How many days did you picket?

A. Well, I believe three or four days. I don't remember exactly.

Q. In a row? [949] A. Yes, straight.

Q. How many hours each day?

A. Six to ten; 6:00 in the morning to 10:00 o'clock.

The Court: 6:00 in the morning to 10:00?

The Witness: To 10:00 o'clock in the morning. Four hours.

(Testimony of Romolo Chigi.)

Mr. Rubin: Will you mark this?

The Clerk: 9 and 10 for identification.

(The documents referred to were marked Government's Exhibits Nos. 9 and 10 for identification.)

Q. (By Mr. Rubin): Mr. Chigi, I show you what has been marked as Government's Exhibit No. 9 for identification. I will ask you if you ever saw that before. A. Yes, that is my card.

Q. That was your card? A. Yes.

Q. Who gave that card to you?

A. Mr. Sawyer.

Q. And do you know what these punch marks mean on that card?

A. Yes; four hours of picketing for every punch.

Q. Four hours of picketing for every punch, is that right? A. Yes. [950]

Q. And there are five punch marks, is that correct? A. Yes.

* * *

We offer Exhibit No. 9 for identification into evidence.

The Court: Admitted.

(The documents referred to were received in evidence and marked Government's Exhibit No. 9.)

Q. (By Mr. Rubin): Now, Mr. Chigi, after you did your picket duty, did they give you a clear card? A. Yes, sir.

(Testimony of Romolo Chigi.)

Q. I show you Government's Exhibit No. 10 for identification and ask you if that is the card they gave you.

A. Yes, sir.

Q. Who gave you that card?

A. Mr. Sawyer, Mr. Smith.

Mr. Rubin: We offer Government's Exhibit No. 10 for identification into evidence, your Honor.

The Court: Admitted. [951]

* * *

(The document referred to was received in evidence and marked Government's Exhibit No. 10.)

Q. (By Mr. Rubin): After you got this clear card, how many days fishing did that give you?

A. Three days.

Q. Who told you three days?

A. Mr. Sawyer.

Q. And did Mr. Sawyer tell you to do anything after the three days?

A. To report in back at San Pedro.

Q. Did you report back to San Pedro?

A. Yes, I do.

Q. Did you talk to him again?

A. Yes, sir.

Q. What did you ask him after you reported back?

A. He asked me to do some more picketing before I got some more clear card to go fishing.

Q. Who said that? A. Mr. Sawyer.

Q. Did you do some more picketing?

A. Yes, I do. [952]

(Testimony of Romolo Chigi.)

Q. How much did you picket the second time?

A. I believe about two days.

Q. Then did he give—— A. Six days.

Q. Then he gave you six days clearance?

A. Yes.

Q. Did you fish for six days?

A. Yes, I fish down at Newport.

Q. Did you deliver any of the fish you caught at all during that period to San Pedro?

A. No, sir.

Q. Were any instructions given to you as to where you should deliver that fish?

A. Yes, sir. He told me to go to Martin.

Q. What port is that located in?

A. In Newport.

Q. When you came back from your six days fishing, from your second trip out, did you have a further talk with Mr. Sawyer? A. Yes.

Q. Who else was present there?

A. Just alone, Mr. Sawyer.

Q. Just you and Mr. Sawyer?

A. Yes, sir.

Q. Will you tell the Court and jury, Mr. Chigi, what [953] was said then by you and Mr. Sawyer?

A. Well, I come in from Newport and I have the net in very bad damage by the shark, and I have the net on a rack, and I was fixing the net. Mr. Sawyer asked me to go and do some more picket line, and I told him, I said I can't. My net is in very bad condition. I got to fix.

(Testimony of Romolo Chigi.)

And he told me, he says, never mind your net. Go and picket, otherwise you can't go fishing no more.

I said, I can't. I won't go picketing. I want to take care of my net.

He said, if you don't go picketing I won't let you go out fishing.

And the argument—he told me, you don't go fishing and I fine you \$8 a fine and \$4 if you don't do the picketing.

I say, I am not going to pay. I refused to pay. But I am going to take my net back and I am going to quit fishing before I pay. What I did, I dried the net and I took it home.

Q. Did you go fishing on that small boat after that?

A. No, I go after the strike. For the duration of the strike I didn't fish no more.

Q. For the rest of the strike you didn't fish any more?

A. No. But the strike no last much longer, probably not four or five days after the argument.

Q. Mr. Chigi, where do you catch the fish, how far out [954] do you go?

A. Well, it depends. Sometimes you go two miles, or three miles. On the morning you come close to the coast again.

Q. Do you ever go out beyond three miles?

A. Sometimes, yes. [955]

* * *

(Testimony of Romolo Chigi.)

Q. (By Mr. Rubin): Did you ever join the union, Mr. Chigi? A. Yes, I do.

Q. And when did you join the union with reference—withdraw that. Were you a member of the union before you did picket duty?

A. No, sir.

Q. When did you join the union?

A. I joined the union before they gave me the clear card.

Q. And did you have any conversation with anybody about joining the union?

A. No, sir; it was my own idea.

Q. So you did picket duty and then you joined the union, is that right? A. Yes.

Q. Did you go to the union hall?

A. Yes, sir.

Q. Did you pay any money? A. Yes, sir.

Q. How much did you pay?

A. \$10 and \$4. [956]

* * *

Q. (By Mr. Rubin): Did you ever receive any notices of meetings of the union after that time?

A. No.

* * *

Q. (By Mr. Rubin): Did you ever go to any meetings after that time? A. No, sir. [957]

* * *

MARIO BREGANTE

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Mario Bregante.

The Clerk: Your address?

The Witness: 671 West Ninth Street, San Pedro.

Direct Examination

By Mr. Rubin:

Q. What is your business or occupation, Mr. Bregante? A. Fisherman.

Q. How long have you been so engaged?

A. I start fishing since I was eleven years old, still at it; I am thirty-six.

Q. Have you been fishing continuously since that time?

A. No. I was in the service there for two years—two months minus three years.

Q. When did you get out of the service?

A. May 2nd.

Q. Of what year? A. 1945.

Q. And thereafter did you commence fishing?

A. Yes, sir.

Q. On what boat? A. Bobby Boy. [961]

Q. For what type of fish did you fish?

A. Sea bass.

Q. Out of what port? A. San Pedro.

Q. And where did you sell this fish when you caught it? A. Fresh fish market.

(Testimony of Mario Bregante.)

Q. Calling your attention to the latter part of May, 1946, do you know whether or not there was a so-called strike at San Pedro?

A. No, I didn't know at the time until we come in that Monday morning.

Q. Until you came in that Monday morning?

A. Yes, sir.

Q. Was that the Monday morning the strike was called? A. Yes.

Q. I see. What did you see there when you came in?

A. I was called upon the dock and asked to stop fishing.

Q. Just a minute. Who called you upon the dock?

A. One of the—I think his name was George. I talked to George upon the dock. [962]

* * *

The Court: Do you see him in the court room here?

The Witness: Yes, he is sitting right here (indicating).

The Court: Which one?

The Witness: The fellow in the white shirt.

Mr. Rubin: Let the record show the witness is referring to Mr. George Knowlton.

Q. (By Mr. Rubin): Mr. Knowlton called you on the dock?

A. I talked to him on the dock.

* * *

(Testimony of Mario Bregante.)

Q. (By Mr. Rubin): Did you have a conversation with Mr. Knowlton at that time, have a talk with him?

A. Yes, he just told us to stop, and we stopped.

Q. Who else was present, Mr. Bregante?

A. No one that I remember.

Q. Just yourself and Mr. Knowlton? [963]

A. Yes, sir.

Q. All right. What did Mr. Knowlton say to you?

A. Just asked us to stop fishing and we stopped.

Q. Did you say anything to him?

A. No, sir.

Q. For how long——

The Court: Did he assign any reason to stop fishing?

The Witness: Just there was a strike on and just asked us to stop, and we didn't know there was a strike on, and we just stopped.

* * *

The Court: Just a minute. You said Mr. Knowlton talked to you and "we" stopped fishing; what do you mean?

The Witness: The boat.

The Court: The boat?

The Witness: Yes.

The Court: You are the only one on the boat?

The Witness: No; there is five of us on the boat.

The Court: Five of you on the boat?

The Witness: Yes.

(Testimony of Mario Bregante.)

Q. (By Mr. Rubin): I see. And when did you talk to Mr. Sawyer?

A. Well, that was—I guess about three weeks, you know, the strike was going on.

Q. Did you do any fishing during that three weeks?

A. No, we went out fishing a week after that for sardines.

Q. For sardines?

A. Yes, we went out one day.

Q. You went out one day? A. Yes, sir.

Q. And did you have any conversation with any of the union men before you went out fishing for sardines? A. No.

Q. Where did you unload the sardines?

A. In Wilmington.

Q. At Wilmington? A. Yes.

Q. To a fresh fish market?

A. No; to a cannery.

Q. Before you went out fishing for fresh fish again, did you have any conversation with any union man at the dock or elsewhere? [965]

A. We took a walk down to the fish market and they told us that we had to go out picketing.

Q. Just a moment. Who is they?

A. Sawyer.

Q. Sawyer? A. Yes, sir.

Q. And where was that conversation?

A. On the fish dock.

Q. Who else was there?

A. I think he was the only one there.

(Testimony of Mario Bregante.)

Q. All right. What did Mr. Sawyer tell you?

A. They told us we had to go on picket duty.

Q. Did he tell you anything else then?

A. No, not that time there.

Q. And what did you say to him?

A. That we had work to do on the boat, that we weren't able to do any picket duty.

Q. Did Mr. Sawyer say anything, and if so, what?

A. No, he didn't say nothing that first time there.

Q. Did you have a later conversation with him?

A. Yes, I think it was a day or two later.

Q. Where did that conversation take place?

A. Same; on the fish dock.

Q. Who was present at that time?

A. I think he was alone. There was a couple of fellows [966] there, but I spoke to him alone.

Q. What did he say to you and what did you say to him?

A. He told us that we had to go on picket duty or otherwise we would have to pay for our picketing.

Q. Did he tell you how much?

A. It was \$12.

Q. Did he say anything else at that time?

A. No, sir.

Q. Did you say anything to him at that time?

A. No.

Q. Did you go fishing? A. No.

Q. Did you have any conversation with him after that? A. No.

(Testimony of Mario Bregante.)

Q. Did you ever go fishing?

A. No; just after the second time we paid.

Q. After the second time you paid?

A. Yes; we paid twice.

Q. After you had this second conversation with him did you pay anything?

A. Yes, we paid \$16.

Q. To whom did you pay it?

A. To Tom Sawyer.

Q. Did he give you anything in return for that?

A. I think he gave us a slip there stating that we paid [967] the money.

Q. And then did you go fishing?

A. We just went out the one day.

Q. One day? A. Yes, sir.

Q. Did you go out after that during the strike?

A. No, we didn't go out any more.

Q. You fished how many days?

A. Just that one day during the whole strike.

Q. Did you pay anything besides the \$16?

A. No, sir.

Q. Did you ever do any picket duty?

A. No, sir.

Q. Are you a member of the union?

A. No, sir.

Q. Do you work for a salary or a wage for any of the fish dealers on the fish pier at San Pedro?

A. No, sir.

* * *

Q. (By Mr. Rubin): How many men in your crew? [968] A. Five.

(Testimony of Mario Bregante.)

The Court: Are you the captain?

The Witness: No, sir.

Q. (By Mr. Rubin): What do you fish for?

A. Mackerel, Spanish mackerel.

The Court: You don't throw the others back in the sea, do you?

The Witness: No. We find a school of mackerel, Spanish mackerel, or sardines, and we make a haul.

Q. (By Mr. Rubin): Is the catch sold in San Pedro? A. Yes.

Q. To who is it sold?

A. To the fresh fish market.

The Court: Who determines among the crew who is going to sell the fish or who you are going to sell it to, or what price you will sell it at?

The Witness: The skipper. That is the old man.

* * *

The Court: He decides that?

The Witness: Yes.

The Court: Does he consult with you?

The Witness: No.

The Court: He makes the decision?

The Witness: Yes. [969]

The Court: And do you fish on a share basis?

The Witness: Yes, share basis.

Q. (By Mr. Rubin): And divide the profits?

A. Yes, sir.

Q. I believe you testified that you didn't go fishing for almost three weeks after the strike was called? A. Yes.

(Testimony of Mario Bregante.)

Q. Do you know whether or not during that time barracuda or other species of fresh fish were running? A. They were.

Q. Do you know whether or not other boats were fishing?

A. Well, some of the boats were fishing, yes.

Q. And during that time why didn't you go fishing?

A. We couldn't go out fishing because we all had a round haul net. You can't go out fishing with a round haul net for barracuda or stuff like that, because it is against the law.

Q. What type of fish is your net equipped to fish for?

A. Mackerel, sardines, Spanish mackerel, anything for a round haul.

Q. Were those fish running during that time?

A. Yes.

Q. Why didn't you go fishing for that type of fish? A. We were scared.

Mr. Andersen: I move that be stricken, may it please [970] the court. It is a conclusion and opinion of the witness, and no foundation laid for such a remark as that.

Mr. Rubin: An expression of a state of mind, if your Honor please, and the cases so hold.

Mr. Andersen: It is clearly an opinion and conclusion of the witness, and was not responsive to any question asked.

The Court: You said the cases hold that?

Mr. Rubin: My understanding, if your Honor

(Testimony of Mario Bregante.)

please, is that the witness can testify as to his own state of mind as to the reason for a certain type of conduct. It is not a conclusion, because a conclusion, as I understand, is a deduction from some outside fact which this man perceives and then thinks about and decides. This is a statement that only this man can testify about, and that is the reason that he didn't go out fishing during this three-week period when his fish were running. We submit, if your Honor please, it is a proper question and it is a proper answer.

Mr. Andersen: May it please the court, there is no question but what under certain circumstances people may testify as to a state of mind. But that is only when the surrounding circumstances are such that a reasonable person could draw the same conclusion, such as if a person is in a house which is on fire—the person could naturally state that they were afraid because there are surrounding circumstances. But if we view this man's testimony, referring to all the conversations [971] he had with the business agent, they were very friendly; the first conversation the business agent said, "We want you to do picket duty," and the witness said, "We are too busy"—

The Court: Let's not argue the evidence.

Mr. Rubin: I can discuss that phase too, if the court please.

Mr. Andersen: So there is no surrounding basis from which, as a reasonable person, he could state that he would be scared. Otherwise there would be

(Testimony of Mario Bregante.)

absolutely no limit to a man expressing his opinion.

The Court: I don't think there is an unlimited permission to express his opinion. I have been sustaining objections to the same type of question to other witnesses.

Mr. Rubin: Your Honor, I don't want to argue the facts before the jury, if your Honor please. I think that I stated it in such a fashion that would indicate that there is enough evidence from this witness to form the basis for his expression of opinion as to his state of mind. One thing I can call your Honor's attention to: They pulled up and one of the defendants in this case said, "You can't go fishing; stop fishing," and then he didn't fish for three weeks.

The Court: I think I will sustain the objection, that is a question that the jury will have to decide, and strike the answer.

Mr. Andersen: Thank you, your Honor. [972]

The Court: Don't thank me. I don't do things to be thanked; I do them because I think it is the only thing to do.

Mr. Andersen: I move my remark be stricken, your Honor.

Mr. Rubin: No further questions.

Cross-Examination

By Mr. Kenny:

Q. The Bobbie Boy was one of the boats that you fished on, wasn't it? A. That is right.

(Testimony of Mario Bregante.)

Q. That boat was owned by the State Fish Company, wasn't it? A. That is right.

Q. And you worked for the State Fish Company when you worked for them? A. That is right.

Q. And you had to deliver all of your fish to the State Fish Company? A. Yes, we were.

Q. And the State Fish Company is one of the fish dealers on the wharf there at San Pedro?

A. Yes, they are.

Mr. Kenny: That is all.

* * *

FILLIPO GUGLIELMO

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Rubin:

Q. What is your business or occupation, Mr. Guglielmo? A. Fishing.

Q. How long have you been so engaged?

A. About four and a half years before I went in the Army.

Q. When did you come out of the service?

A. May 19, 1946.

* * *

Q. Were you fishing during the month of May, 1946, after you were discharged from the service?

A. No.

(Testimony of Fillipo Guglielmo.)

Q. When did you start fishing?

A. I don't know; in June sometime.

Q. On what boat did you fish?

A. My own boat; the Solano.

Q. Do you own that boat? A. Right.

Q. What type of fish did you go out to catch?

* * *

Q. What type of fish did you go out for?

A. Sea bass.

Q. Where did you sell your catch, Mr. Guglielmo? A. Pedro.

The Court: The fresh fish market or the canneries, which?

The Witness: Fresh fish market. [976]

Q. (By Mr. Rubin): During what time did you sell your fish at San Pedro?

A. 8:00 o'clock at nighttime.

Q. Is that the usual time when boats come in to unload? A. No.

Q. During the month of June did you have any conversation with any of the persons that you see here in the courtroom? A. Yes.

Q. With whom? A. That guy there.

* * *

Mr. Rubin: Let the record indicate that Mr. Zafran has been identified.

The Court: Mr. Zafran, will you stand up?

(The defendant Zafran stood.)

The Court: Is that the man?

The Witness: Yes.

(Testimony of Fillipo Guglielmo.)

Q. (By Mr. Rubin): When did you have this conversation with Mr. Zafran?

A. I don't know, during the strike.

Q. During the strike? [977] A. Yes.

Q. Where did this conversation take place?

A. In the fish market.

Q. At the fish market? A. Right.

Q. At the wharf down there? A. Right.

Q. Who else was present? Were any of the other persons that you see here present during that conversation?

A. I don't know. A whole bunch of guys were there.

Q. What was said by you to Mr. Zafran and what Mr. Zafran say to you at the conversation?

A. To cooperate with them.

* * *

Q. Who here did you talk to during the strike?

A. Sawyer back there.

Q. Mr. Sawyer?

A. Yes, on the picket line.

Q. On the picket line? A. Yes.

Q. What did you say to Mr. Sawyer and what did he say to you? [980]

* * *

The Court: Without relation to the time of the month, do you remember the occasion of the strike beginning, how many days after the strike began did you talk to Sawyer, can you fix it something like that?

(Testimony of Fillipo Guglielmo.)

The Witness: The day I wanted to go fishing, I went down and asked him for a clearance card.

The Court: When was the day you wanted to go fishing.

The Witness: When he started issuing them. I don't know what date that was.

The Court: When they started issuing them?

The Witness: Yes.

The Court: Very well.

Mr. Rubin: Will you mark this, Mr. Clerk?

(The document referred to was marked Government's Exhibit No. 11 for identification.)

Q. (By Mr. Rubin): Mr. Guglielmo, I show you what has been marked Government's Exhibit No. 12 for identification and ask you if you have——

Mr. Andersen: There will be no objection to those going into evidence.

The Court: Do you offer them in evidence?

Mr. Rubin: I would like to ask this question first, if your Honor please.

Q. Did you ever see that card before?

A. Yes, it is mine.

Mr. Rubin: May Exhibit No. 12 and Exhibit No. 13 for identification be admitted at this time, if your Honor please, as Government's Exhibit next in order consecutively?

The Court: Very well.

(The documents referred to were received in evidence and marked Government's Exhibits Nos. 12 and 13 respectively.) [982]

The Clerk: What about No. 11, Mr. Rubin?

(Testimony of Fillipo Guglielmo.)

Mr. Rubin: No. 11 is not being offered at this time.

Q. I show you Government's Exhibit No. 12 and ask you who gave you that card.

A. The committee down at the fishermen's slip.

* * *

Q. A committee composed of whom?

A. That guy, George Knowlton.

* * *

Q. Let the record show Mr. Knowlton has been indicated. Who else? A. Smithy back there.

Q. Let the record show Mr. F. R. Smith has been indicated.

* * *

The Court: Which card are you referring to now? Will you pick it up?

The Witness: (Indicating card.)

The Court: What is that number? That is No. 13? [983]

The Witness: Yes.

The Court: That was given to you by these men, is that right?

The Witness: The comimtte; yes.

Q. (By Mr. Rubin): Did you have a conversation with those men at the time that that card was given to you?

A. I just asked them, I wanted to get a clearance card to go out.

Q. Where was this conversation?

A. Down at the fishermen's slip down at the building.

Q. How long after the strike started did you have this conversation with them, Mr. Guglielmo?

(Testimony of Fillipo Guglielmo.)

A. About a week.

Q. What did they answer you when you asked them that question?

A. They had a vote on it.

Q. Did they say anything to you when you asked them that question?

A. Told me to go outside and they would vote on it.

Q. Did you go outside? A. Yes.

Q. And then what happened after you got outside? A. They called me back in.

Q. Did they say anything to you? [984]

A. I had to put in four hours of picketing.

Q. Do you recall which specific person told you that? A. No.

* * *

Q. Did you go fishing after that?

A. After I put my four hours in.

Q. Where did you picket?

A. In front of the fish markets.

Q. How many days did you go fishing after you did your picketing there? A. Three.

Q. Then did you come back?

A. Yes, to have the card punched to go out again.

Q. Who punched the card?

A. Sawyer back there.

Q. Who. A. Sawyer.

Q. Let the record show that Mr. Sawyer has been indicated [985]

After Mr. Sawyer punched your card, did you go out fishing again? A. Right.

(Testimony of Fillipo Guglielmo.)

Q. For how many days?

A. Then I kept going all the time and I paid. I would come in and I paid and went back out.

Q. Who did you pay?

A. I don't see him—that guy in the corner back there.

Mr. Rubin: Will you stand, please?

* * *

Q. May the record show Mr. Kennison has been indicated?

Did you have a conversation with Mr. Kennison before you paid him anything? A. No.

Q. Did you talk with him? A. No. [986]

Q. Why did you pay him anything?

A. So I could go out.

Q. Pardon me?

A. To have my picket taken care of so I could go out.

Q. How much did you pay? A. \$8.

The Court: You mean altogether?

The Witness: \$4 for my brother and \$4 for me.

The Court: \$8 at one time?

The Witness: Yes; \$4 for my brother and \$4 for me.

The Court: \$4 for your brother and \$4 for you?

The Witness: Yes.

Mr. Rubin: I think that is all, your Honor.

Cross-Examination

By Mr. Kenny:

Q. You are a member of the Small Boat Owners Association? A. Right. [987]

* * *

JOHN JOSEPH DEMEGLIO

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Schwartz:

Q. Mr. Demeglio, with what company are you associated?

A. Los Angeles Fish & Oyster Company.

Q. Are you a member of that firm?

A. Yes, sir.

Q. Were you a member of that firm in May of 1946?

A. Yes, sir.

Q. Some time in May, 1946, were you handed a contract like Government's Exhibit No. 3 which I now hand you?

A. Yes, sir.

Q. Where did this take place? [988]

A. Down at the L. A. Fish & Oyster Company.

Q. At San Pedro?

A. At San Pedro.

Q. Do you recall the date?

A. No, I don't right offhand.

Q. With reference to the so-called strike that took place there, do you recall how long before that?

A. Well, I don't know; about a month, some thing like that.

Q. Is that your best recollection?

A. Yes.

Q. At what time of the day, do you recall?

A. It was in the morning sometime. I don't know exactly the exact time. [989]

Q. And who handed you the contract?

A. Well, there was three fellows there. Gilbert Zanfran was one of the boys; but the other two—I don't know the other two boys.

(Testimony of John Joseph Demeglio)

Q. Do you see Mr. Gilbert Zanfran in the court room?

A. Yes, he is right there. (Indicating)

Mr. Schwartz: May the record show the witness indicated the defendant Zanfran.

Q. (By Mr. Schwartz): What happened on that occasion?

A. He just handed me that and he says, "You look it over, look it over and sign it, and then we will pick it up." That is all he says.

Q. Then what happened?

A. I took the contract and brought it in the office, and I didn't do a thing about it.

Q. Did you say anything to him at that time?

A. No, nothing.

Q. Did he say anything else to you?

A. No.

Mr. Schwartz: You may cross-examine.

Cross-Examination

By Mr. Andersen:

Q. You say that according to your best recollection it was about a month before the strike?

A. Something like that. [990]

Q. That is your best recollection?

A. That's right.

Q. Was he there 10 or 15 minutes talking to you about it?

A. Not very long; just a few minutes.

Q. And suggested to you that you read the contract over, did he?

A. That's right.

(Testimony of John Joseph Demeglio)

Q. And then did he suggest that you either get ahold of him or that he would get ahold of you to discuss the signing of the contract?

A. We would sign it and they would pick it up.

Q. When he asked you to sign it, implicit in what he told you, he told you, I assume, if the contract was agreeable to you that you would sign it, is that correct?

* * *

A. He didn't say that. He said, "Here is the contract." He didn't say whether it is agreeable or not.

Q. (By Mr. Andersen): Had you had any previous discussion then about any contract to be signed or to be presented to you? A. No, sir.

* * *

Q. (By Mr. Andersen): Had you had any previous discussion then about any contact to be presented to you? A. No, sir.

* * *

Q. (By Mr. Andersen): Then is this the first time that the matter of the contract of this kind was presented to you?

A. To me it was, yes, sir.

Q. You had no previous knowledge or indication about it? A. Not me.

Q. And at that time was there any strike talk?

A. No.

Q. And did you subsequently read the contract?

A. I just handed it to my partners. They read it.

(Testimony of John Joseph Demeglio)

Q. I beg your pardon?

A. I handed the contract to my partners. They read it over.

Q. You have one or two or more partners?

A. Yes, sir.

Q. Did you thereafter get in touch with Mr. Zafran or the union?

A. No, sir; they came around later on. I never got in touch with them at all.

Q. They came around to your place of business later on, but I assume you didn't talk to them?

A. They came around and wanted to know whether I signed the contract or not.

Q. What did you tell them?

A. I said we didn't sign anything.

Q. I beg your pardon? [992]

A. I told them we didn't sign anything.

Q. I assume that you said that you wouldn't sign the contract as drawn? A. That's right.

Q. And didn't Mr. Zafran at that time tell you, "Well, if you won't sign the contract as it is, we can make some changes and discuss it"?

A. He didn't say anything to me about it.

Q. Do you know if that was discussed with any of your partners? A. I do not.

Q. You have no knowledge about that?

A. No.

* * *

WALTER T. VESTAL,

called as a witness by and on behalf of the government, having been first duly sworn, was examined testified as follows: [993]

* * *

Direct Examination

By Mr. Schwartz:

Q. Mr. Vestal, what is your business or occupation? A. Fisherman.

Q. How long has that been your business?

A. It has been my business off and on until about 1937, which I went into it total; it is all my-business now.

The Court: You mean up until 1937 you were a fisherman off and on, and since then you are a fisherman all the time?

The Witness: Yes.

Q. (By Mr. Schwartz): Mr. Vestal, have you been a boat owner or worked on a boat as a member of a crew, or both?

A. I have worked on a boat as a member of the crew, and I have also owned my own boats.

Q. In 1946, in May, what were you doing by way of work?

A. I was working with a cannery while my new boat was in construction in San Diego.

Q. At that time were you a member of Local 36?

A. Yes.

Q. At that time or in May or June, 1946, did you have any conversation with any of the people in this courtroom that you may see with regard to your participation in a so-called strike?

(Testimony of Walter T. Vestal.)

A. Yes, I did. I had conversation with Gilbert Zafran and George Knowlton, Red Meachem which he is not here. [994]

* * *

Q. (By Mr. Schwartz): All right. When did these conversations take place or did this conversation take place, the best you recall?

A. The conversation that took place with the boys was over at the union—not the hall, but the office.

Q. When?

A. I couldn't give you the approximate date or anything like that, but it was during the strike.

Q. What was said at that time? [995]

* * *

A. I was informed that I should go on picket duty and do my duty toward the Local as being a member of it, that I should do picket duty so that I could go out fishing when I got my new boat, that I would have enough time chalked up against the new boat that I could go ahead and get a permit to go out fishing with it.

Q. Who said that?

A. That was given to me by two or three members in the hall there—not in the hall, in the office there at that time, and the picket captain.

Q. Do you remember his name?

A. Well, the picket captain was Tom Sawyer.

Q. Do you see him in the court room?

A. Yes; right there (indicating).

Q. Go ahead.

(Testimony of Walter T. Vestal.)

A. And George Knowlton also told me that I should do it, otherwise I wouldn't be able to get out and fish. And then my crew members, for me to tell my crew members that they should also come down and picket, and that time would go against the boat also, so that we could get out sooner if the strike prolonged, and that way we would be able to fish when the season came on, and I got the boat.

Q. What did you say?

A. Well, I told him at that time I didn't see why I had to come over and picket, because the boat was being built [996] in San Diego, and since about January I had sold the other boat, and this boat was under construction, in the meantime I was working for the cannery, operating one of their boats over there and doing carpenter work in the cannery, and getting the barge ready for the season coming on, and I was also buying fish for the cannery, and I told him I didn't see how I could really get time. They told me that I could come there in the evening, do it some evening. And that is what I did. I came in the evening. I forget whether I put in eight or sixteen hours, but it is on my picket card. [997]

Q. Were you given any instructions with regard to what you were to do as a picket?

A. Yes. I had the instructions to keep my eyes open and parole a certain area there and if trucks came in to see what they unloaded and loaded, and if I knew where they went to, to get their names and

(Testimony of Walter T. Vestal.)

license number, and also that if any boats unloaded out in front, to see what boats they were, and not let them unload if possible.

Q. To do what?

A. Not to let them unload if I could possibly stop them.

Q. Were you given a picket card?

A. Yes.

Q. Do you have it with you?

A. Yes, I have. (Producing document)

Mr. Schwartz: Will you mark this for identification?

The Clerk: No. 14.

(The document referred to was marked Government's Exhibit No. 14 for identification.)

Q. (By Mr. Schwartz): I will show you what has been marked Government's Exhibit 14 for identification and ask you whether that is the picket card that you received.

A. Yes, this is my picket card.

Q. Who gave it to you? [998]

A. Tom Sawyer.

Q. Is there a signature on it? A. Yes.

Q. At the time you got it, was it signed?

A. Yes.

Q. There are holes punched in it. Can you tell us how that happened or when?

A. No. It is for the picket duty but what they account for—I know it counts for hours but I don't know how they read it here.

Q. Who punched it?

A. That I don't believe I can remember just who did, whether it was Sawyer or whether it was done in the office. I couldn't tell you that.

Q. Was it done in your presence?

A. I believe it was. I believe it was Sawyer that punched the card.

Q. At the union office?

A. No, it was down in his car, down where we did the picket duty at the markets.

Mr. Schwartz: We offer Government's Exhibit 14 in evidence, your Honor.

The Court: Admitted.

(The document referred to was received in evidence and marked Government's Exhibit No. 14.) [999]

* * *

Q. (By Mr. Schwartz): You presently own your own boat, Mr. Vestal? A. Yes, I do.

Mr. Schwartz: You may cross examine.

Cross Examination

By Mr. Kenny:

Q. Mr. Vestal, when you had this conversation with Mr. Knowlton he discussed also with you the purposes of asking for a contract from the fish dealers, didn't he?

A. I don't quite remember whether he did or not. I wasn't at the meeting when the strike vote was taken, and he proposed that it was a raise in price on fish, to establish a minimum price on our catches. That is the understanding.

(Testimony of Walter T. Vestal.)

Q. And he told you, did he not, what the fishermen wanted was to know what price they were going to get before they went out and tried to catch fish, isn't that right? A. That is right.

Q. And when he told you to go—talking about your going on the picket line—he told you that you were not to use any violence at all, isn't that right?

A. That is correct.

Q. Your instructions were that there were to be no [1000] intimidation of any kind or threats or anything of that kind, is that right?

A. That is right.

* * *

EDWARD HAMILTON,

called as a witness by and in behalf of the government, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Schwartz:

Q. Mr. Hamilton, what is your business or occupation? A. It is commercial fishing.

Q. Do you own your own boat?

A. No, sir.

Q. You are a crew member?

A. That is right.

Q. On what boat do you fish? [1001]

A. The California Girl.

Q. Who owns the California Girl?

A. Johnnie Tuffs.

(Testimony of Edward Hamilton.)

Q. Does the California Girl fish for the fresh fish market or for the canneries?

A. It fishes for the canneries primarily. It never has fished regularly for the market. It is strictly a cannery boat.

Q. Mr. Hamilton, are you a member of Local 36 of the International Fishermen and Allied Workers of America? A. Yes.

Q. When did you become a member of that organization?

A. I think it was along in June, in June some time.

Q. Of what year? A. Of '46. [1002]

* * *

Q. Will you state the circumstances under which you became a member of Local 36?

A. Well, I was approached by a member at various times to join the union, and I really thought that I—well, I really didn't care to belong to it. [1003]

* * *

Q. Who was the member that you are talking about? A. Gilbert Zafran.

* * *

Q. When was this? He said June 1946.

A. I believe it was in June.

Q. Do you remember approximately what day or date in June? A. No, I couldn't.

Q. The early part or latter part?

A. Well, it was probably in the early part. I was working at the cannery at the time, and not

(Testimony of Edward Hamilton.)

fishing, and at the time I belonged to the Cannery Workers Union, which is A.F. of L., and at that time I asked him if the union didn't recognize that Cannery Workers local and he said that it did.

Then later on he come and asked me to join the union, and I made the statement then, "Well, Gilbert, I understood you gave me to understand that you recognized this union."

He said, "Well, we do not," and that I would have to join the union to go fishing.

At the same time I was working at the cannery and I really didn't feel as I should join a union then while I was working in the cannery.

Q. Where did these conversations take place?

A. They took place on the dock in front of the cannery there, California Fish Corporation.

* * *

Q. You say you and the members of the California Girl crew went and joined the union?

A. That is right.

Q. Where did this take place? [1005]

A. That was at the union headquarters there in San Pedro.

Q. What happened there?

A. We went in, we paid our initiation fee, I believe it was, and then they had some picket fees charged against us which—I think I paid an \$8.00 picket fee as well as my initiation fee.

Q. How much was the initiation fee?

* * *

(Testimony of Edward Hamilton.)

The Witness: I don't recall. I don't know, it seemed like it was around \$14. I wouldn't say for sure.

* * *

The Witness: Then I believe I paid two months dues as well. [1006]

* * *

Q. Did you do any picketing?

A. No, sir.

Q. Were you given a picket card?

A. Yes.

Q. Do you have it with you?

A. No, I don't.

Q. I show you government's Exhibit 14 in evidence and [1007] ask you whether the picket card you received was like that one.

A. Yes, it was.

Q. Do you recall that there was a signature on it?

A. Yes, sir.

Q. Do you recall the signature on it?

A. It was Meachem.

* * *

Q. After you joined the union, what did you do?

The Court: With relation to what?

Q. (By Mr. Schwartz): Relating to this so-called strike situation.

A. Well, I never had anything to do with it in that way. We went fishing then.

Q. You went fishing on the California Girl?

A. Yes, sir.

Q. Was that for the cannery?

A. Yes, sir.

(Testimony of Edward Hamilton.)

Q. Did you have any further contact with any members of [1008] Local 36 thereafter?

A. No, I never had any personal contact.

Cross Examination

By Mr. Andersen:

Q. As I understand it, Mr. Hamilton, the boat on which you were engaged as a fisherman fished exclusively for the canneries during this time?

A. We have never had a trip for the markets.

Q. Then you fish for the canneries, is that correct? A. Yes.

Q. In other words, you didn't engage in the fresh fish market at all, simply the fish that was used by the canneries, such as tuna or sardines?

A. Yes, sir.

Q. That is correct? A. Yes, sir.

Q. And what cannery were you fishing for?

A. Southern California Fish Corporation.

Q. And that is a cannery at San Pedro?

A. Yes, sir. [1009]

Q. And you were asked to join the union, were you? A. Yes, I was.

Q. And you subsequently joined the union?

A. Yes.

Q. And you were advised, I assume, about certain union regulations, is that correct?

* * *

The Witness: Well, I don't know. It is just one of those things, you know. I had the books and one thing and another, and as far as—I never read them.

(Testimony of Edward Hamilton.)

Q. (By Mr. Andersen): You were given the constitution of the union, were you?

A. I believe I was.

Q. And you were given a copy of the by-laws of the union, were you? A. I believe so.

Q. You were given a copy of the regulations of the union, were you? A. Yes.

Q. The floor of the union was open to you at all times, was it? [1010]

A. I imagine it was.

Q. The office of the union was open at all times to you, was it? A. Yes.

Q. You had full freedom to express anything that you wished as far as the operation of the union was concerned, did you?

A. That's right.

Q. And you were told, I assume, that the union in its meetings had passed resolutions and motions, possibly, regarding picketing at one time or another? A. Right.

Q. You were told that, were you?

A. That's right.

Q. You were told, I assume, that all unions from time to time picket in an unfair situation; you were told that, were you?

A. I was told that, I believe.

Q. And you as a union member did not see fit to picket, nor did you picket, is that correct?

A. I did not picket. [1011]

(Testimony of Edward Hamilton.)

Redirect Examination

By Mr. Schwartz:

Q. Mr. Hamilton, were you in any way interested at that time in the constitution and by-laws of Local 36? A. I was not.

* * *

Q. (By Mr. Schwartz): Were you in any way interested in having the liberty or freedom of the union hall at that time? A. No, I wasn't.

Q. Were you in any way interested in any possible situation that Local 36 was or was not in at that time? A. I was not interested in it.

The Court: Do you have the copies of the by-laws and whatever data you got, the constitution?

The Witness: No, I don't think I have them, your Honor.

* * *

JOHN TUFTS,

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows: [1012]

* * *

Direct Examination

By Mr. Schwartz:

Q. What is your business or occupation?

A. Commercial fisherman.

Q. How long has that been your business?

A. Well, I would say twenty-three years off and on.

(Testimony of John Tufts.)

Q. Do you own your own boat? A. I do.

Q. How long have you owned a boat?

A. Since 1936.

Q. Do you presently own a boat?

A. I beg your pardon?

Q. Do you own a boat at this time?

A. Yes.

Q. What is the name of your boat?

A. At present? California Girl.

Q. When did you get the California Girl?

A. California Girl was completed in August '45.

Q. How big a boat is the California Girl?

A. Forty-eight feet. [1013]

Q. And what is her value?

A. Well, I have around \$30,000 in it.

Q. How many people are required to fish the California Girl?

A. I have had a crew as high as five. Normally it is usually around four, I think.

Q. Out of what port does she operate?

A. San Pedro.

* * *

Q. (By Mr. Schwartz): What kind of fish do you go out for,—fresh fish or cannery fish?

A. Primarily cannery fish, at present.

Q. What do you mean "Primarily"? [1014]

A. That is, during the time that the boat was being built I did not fish any market fish at all, and since then I don't think I have delivered two or three hundred pounds to the fresh fish market.

(Testimony of John Tufts.)

Q. What portion of the catch do you sell to the fresh fish market? A. Very little, if any.

Q. Are you a member of Local 36 of the International Fishermen's and Allied Workers of America? A. I was a member, yes.

Q. When did you become a member of that organization?

A. Well, during the time of the market strike. I don't recall the date.

Q. Well, assuming that the so-called strike commenced on May 29th, when would you say you became a member of Local 36?

* * *

A. I can't remember that date. As I said before, it would be approximately a week or two after that particular time.

* * *

Q. Now, having that in mind, will you tell us the circumstances surrounding your joining this union, just tell us what happened, not what somebody told you.

A. Well, I can't recall any conversations with any particular person. I talked to George Knowlton and he did [1016] state, make the statement to me at the time that it looked like that I wouldn't be able to buy ice, it looked like I wouldn't be able to buy gasoline, and in that vein. That was the only man I talked to——

* * *

(Testimony of John Tufts.)

Q. (By Mr. Schwartz): What was the conversation that you were having with Knowlton at the time he made these statements which you have just testified to? What were you talking about?

A. We were just discussing whether I should join the union, I think it was, more or less in that vein, that—I know his idea was that we should all get in.

Q. Did he ask you to join the union?

A. I don't think he did.

Q. How did he put it to you?

A. Well, for the good of the fishermen, that was his vein.

Q. What did he say? [1017]

* * *

A. Well, it was—I think I have given it as close as I can remember it. That it was just merely that he was stressing that we would be out in the cold if we didn't have a union card. That is, the ice docks were union, and the fuel docks were union, and if we weren't union we wouldn't get any ice or fuel. That was more or less the idea.

* * *

Q. Did you join the union?

A. I did join the union.

Q. Where?

* * *

A. Over at the union hall.

Q. And what took place there?

A. Well, I took my crew over there, we wanted to go out, and we were told—I don't know exactly

(Testimony of John Tufts.)

who told who, but my crew told me, because they were the ones that naturally would have better hearing than I have, came to me with the information that we had all better join the union and get our clearance card before we go out.

Q. Were you in the union hall?

A. I was in the union hall, yes.

Q. And this took place in your presence?

A. Yes.

Q. What else happened in the union hall at the time you joined? Did you pay any money?

A. Well, as I remember, there was just more or less time getting clear, we were in there quite a while, I don't remember what held us up. I don't think we could find the picket captain to sign our clearance.

The Court: Read the question again.

Q. (By Mr. Schwartz): Did you all pay?

A. Yes, we all paid.

Q. How much did you pay?

* * *

A. Whatever the rest of them did I paid, and I can't remember what it was.

Q. Do you remember to whom you paid it?

* * *

A. Well, I think I paid Mr. Zanfran, and another member in there at the time was Meachem.

Q. Were you given a clearance card or any kind of card?

A. Yes sir, I was given a clearance card, a picket duty paid up to the date, and my book.

(Testimony of John Tufts.)

Q. Do you have your clearance card with you?

A. No; I have thrown it all overboard.

Q. I show you Government's Exhibit 13 and ask you whether you got a clearance card like that.

A. No, I don't remember whether we had a clearance card like that. I think mine was more or less—I can't remember whether it was that or not; I thought it was on a typewritten form of some sort, but I may be wrong.

Q. All right. I show you Exhibit 14, Government's Exhibit 14, and ask you whether your picket card looked like that.

A. Yes, I had a picket card. I remember that.

Q. Did it look like this Exhibit?

A. Yes, just exactly like that.

Q. At the time that Mr. Knowlton was talking to you about joining the union, did you indicate to him whether you wanted to join or not?

A. Well, my main objection to the thing was that I didn't believe that a boat owner owning a business and employing people had any business in a union. I could understand where we were wanted in there.

Q. What did he say to that? [1020]

A. And he said that his opinion of that was, as I remember, that we all had to pull together on that line, and the union was the only place that we should get in.

Q. And was that the reason that you joined the union?

A. I will tell you, to be truthful about it; the real reason I joined the union is because I was a little

(Testimony of John Tufts.)

more or less afraid something would happen to my boat. The boat was laying out in front of the cannery.

Mr. Andersen: Just a moment.

The Court: I think he is a lip reader.

Mr. Andersen: He has difficulty in hearing.

The Court: I notice that he doesn't seem to hear so well unless you are talking to him.

Mr. Andersen: I move the answer be stricken, may it please the court, as calling for an opinion and conclusion of the witness.

Mr. Schwartz: I submit the answer is entirely competent as to the state of mind.

Mr. Andersen: The point was argued a short time ago, your Honor.

The Court: Yes, the point was. I don't think that testimony is admissable.

I think it is up to the jury to draw a conclusion or not to draw one, as they may see fit, as to the reason why people do or don't do things, and this from the things that were [1021] said to them, or from all the circumstances.

Mr. Schwartz: If the court please, I submit what is in a man's mind, if it is there and he so states, is a fact, just like any other fact, and it would be asking the jury to do the impossible to find out what is in a man's mind.

The Court: Suppose that you had the teller of a bank on the witness stand in a bank robbery case, and the teller said, "Well, the defendant over there came up and put a Thompson machine gun through

(Testimony of John Tufts.)

the window at me and I handed him over \$25,000," —I don't think it would be competent to ask, "Why did you do it?"

Mr. Schwartz: I don't think it would be necessary.

The Court: He would say, "I did it because I was afraid." But the evidence is there for the jury to draw an inference one way or the other as they might see fit, and the same is true in this case. The objection is sustained. [1022]

* * *

Cross-Examination

By Mr. Andersen:

Q. You have known Mr. Knowlton for many years, haven't you? A. That is right.

Q. You and he are very good friends?

A. I think I am.

Q. How long have you known him?

A. Oh, since about 1918.

* * *

Q. You know his family, don't you?

A. Yes, I know his family.

* * *

Q. This discussion you had with him about the ice, and so forth, was it sort of a friendly discussion with him?

A. It was in a more or less friendly mood, I believe; yes. I think every discussion I have ever had with George, we have never had any hot words one way or the other.

(Testimony of John Tufts.)

Q. You never had any trouble with George, did you?
A. No, none whatsoever.

Q. Now with respect to this boat you have, do you still operate the California Girl?
A. I do.

Q. And you dropped out of the union because you learned that it is the policy of the union not to include the owners of large boats, isn't that true?

* * *

The Witness: No, that was my attitude at the start. I didn't believe that I belonged there. I dropped out on my own convictions.

Q. (By Mr. Andersen): And when was that?

A. My own convictions?

Q. No, when did you drop out?

A. What did I drop out?

Q. When did you drop out of the union or cease paying your dues or whatever you did?

A. I have never attended any of their meetings and I never paid any more dues.

Q. Since the first time?

A. Since the first time.

Q. I assume, however, that your crew belongs to the union?

A. I don't think any of them are paid up members in good standing.

Q. Now when you had this talk with Mr. Knowlton, you told him that you thought that the owners of a boat shouldn't be members of a union, is that right?

A. I have stressed that so many times, yes.

(Testimony of John Tuffs.)

Q. By the way, how many are in your crew?

A. Last summer there were five at that time, including [1025] myself.

Q. Do you still operate the same boat?

A. Yes.

Q. How many members are in the crew now?

A. The boat is tied up at present.

Q. In your conversation, when you mentioned that you didn't believe that the owners of a boat should be in the union, you mentioned that people who employed people shouldn't be in a union, is that what I understood you to say?

A. I stated that. They shouldn't be in the union.

Q. Do you pay any men for working for you?

A. Do I pay any men for working for me?

Q. Yes.

A. Yes, I have. Some of the times when Hamilton's wages haven't come up to \$50 I have dug down in my own pocket and made it up to \$50. You can ask them.

Q. How are the men who work for you paid?

A. They are paid on shares.

Q. And that is the custom in the industry, isn't it?

A. That is right.

Q. In other words, the custom is that if there is a catch they get paid and if there is no catch they don't get paid, isn't that the custom?

A. That is right. [1026]

* * *

(Testimony of John Tufts.)

Q. Mr. Knowlton suggested to you, did he not, that you comply with the regulations of the union, is that correct?

* * *

The Witness: I believe that was the suggestion when he said that I should get in the union with him.

Q. (By Mr. Andersen): And about picketing, I assume that he mentioned substantially the same statement about complying with the regulations of the union?

* * *

Q. That is, that it was a union regulation to picket? A. I understood that.

Q. Did he advise you that it was a union regulation to picket?

A. Well, I can't remember whether he advised me or not, but I don't even think that was brought up.

Q. But he did suggest that you should join the union? A. Yes, that is right.

Q. In order that you would have the benefits of not being declared unfair by labor, is that correct?

A. I don't know that the conversation carried into that vein at all.

Q. Then generally speaking he advised you about the strike itself, didn't he?

A. He made the statement.

Q. That there was a strike?

A. He made the statement on the gasoline and not being able to buy the ice, and as far as that

(Testimony of John Tufts.)

goes I think that was as far as the argument on the thing went, and I don't think there was much more said. [1028]

Q. Of course you told him about boat owners joining unions, you told him that, didn't you?

A. You will have to speak louder.

Q. You told him of course, as you mentioned a few minutes ago, that you thought that boat owners shouldn't be in unions?

A. Yes.

Q. You told him that?

A. That is right.

Q. And he told you, didn't he, the purpose of the strike that was going on, that is, that the men who manned these boats wanted to go out knowing before they went that they would get a certain price for what their labor would result in in a fish catch, he told you that, didn't he?

A. Yes, I believe so.

Q. Did you argue that point with him at all?

A. No, I don't know whether we did or not. We have had so many little arguments like that off and on previously that we didn't even have to bring that up. He knew where I stood and I knew where he stood.

Q. That is with Knowlton?

A. Yes.

Q. And all of these arguments that you have discussed were friendly arguments with an old friend of yours?

A. That is right. [1029]

Q. And there was no ill feeling of any kind?

A. There isn't any yet.

* * *

VITO PIZZO

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. O'Malley:

Q. What do you do for a living, Mr. Pizzo?

A. I go fish for a living.

Q. How long have you been a fisherman, Mr. Pizzo?

A. A long time; all my life.

Q. All your life?

A. Seventeen years in San Pedro.

Q. Do you own your own boat?

A. Yes.

Q. What kind of fish do you fish for?

A. Well, sometimes I fish on shore for small fish.

Q. Fresh fish?

A. Yes, Smelts and other kind.

Q. Anchovies?

A. Yes.

Q. Where do you sell that fish?

A. I sell it to the market.

Q. In San Pedro?

A. Yes.

The Court: The fresh fish market?

The Witness: Yes.

Q. (By Mr. O'Malley): You know there was a strike called there last year?

A. Yes.

Q. In June, 1946?

A. Yes.

Q. Did you sell your fish in the fresh fish market in San Pedro during the strike?

A. No, I couldn't sell them because the strike no let me go out fishing, you know. [1031]

* * *

(Testimony of Vito Pizzo.)

Q. Were you able to sell your fish any place?

A. Well, I can't go some other place because my fish I catch I couldn't sell no place because they are small. Most of the fish I sell for bait.

* * *

Q. Did you do any picketing during the strike, Mr. [1032] Pizzo?

A. Yes, I went there two times I think.

Q. You went twice?

A. Yes, but I was painting my boat, you see.

The Court: You were painting your boat?

The Witness: Yes, and some of these guys came to me.

The Court: Do you see any of them here?

The Witness: That man over there, the old man.

Mr. O'Malley: Indicating the gentleman in the brown suit?

The Witness: I was painting my boat and he came over there and said, "You better do picketing."

I said, "I can't come over because I have to work on my boat. I have lots of work to do."

Then after a couple of days he came again and tell me again, and I said, "Well, I told you the first time I got no time to come over."

Well, after that I was figuring in my head, you know, where I go, because you know I am scared of something, so I went over a couple of times and after that I fished for albacore and then I come back.

(Testimony of Vito Pizzo.)

Mr. O'Malley: Let the record show that the witness indicates the defendant Kennison.

The Court: Yes.

Q. (By Mr. O'Malley): Did you fish inside or outside the 3-mile limit? [1033]

A. Sometimes 3 miles inside, sometimes outside.

Q. Are you employed by any dealer? Do you work for any dealer? Are you on a wage or salary from any dealer?

A. What do you mean?

Q. Do you receive a wage or a salary from any fish dealer in San Pedro?

A. I don't understand.

Q. You sell your fish to the fish dealers?

A. Yes.

Q. You don't get paid any salary or wages?

A. (Pause.) The fish I sell? I don't get you.

Mr. O'Malley: I will withdraw the question.

The Court: Does somebody pay you a salary every week or month or by the day or the hour?

The Witness: No, sir.

The Court: They do not?

The Witness: Nobody pay me anything. Just I get money for the fish I sell to them.

The Court: Your income is from the fish you sell?

The Witness: Yes, that is all.

Q. (By Mr. O'Malley): Are you a member of Local 36?

A. No, sir.

The Court: What is your boat?

The Witness. Jennie: I no belong to the union.

Q. (By Mr. O'Malley): Are you the owner of the boat?

(Testimony of Vito Pizzo.)

A. Yes, me and my brother-in-law; two guys.

Q. How much of an investment do you have in the boat? How much is the boat worth?

A. The boat is worth about \$7,000.

The Court: You and your brother are the only members of the crew, or do you have others?

The Witness: Me and my brother-in-law, two of us own the boat.

The Court: You and your brother-in-law?

The Witness: Yes.

The Court: And you are the only fishermen who fish on that boat?

The Witness: No, we fish about six guys.

The Court: You fish about six?

The Witness: Six guys altogether.

Mr. Andersen: Six what?

The Court: Six guys.

Q. (By Mr. O'Malley): Did you fish during the strike, Mr. Pizzo.

A. I tell you, I went out one week for albacore, just one week.

Q. You fished one week during the strike?

A. Yes. [1035]

Q. What did you do with your catch?

* * *

The Witness: I didn't catch any. I just went out fishing and come back home.

The Court: You didn't catch any fish and then you came home?

The Witness: Yes.

(Testimony of Vito Pizzo.)

Q. (By Mr. O'Malley): That is all the fishing you did during the strike?

A. Yes. I didn't catch any at all. I was going to try for albacore but I didn't catch any. I was working on my boat fixing it. It takes about two weeks to fix up.

The Court: Is that all?

Mr. O'Malley: That is all. Thank you very much.

The Court: Cross examine.

Cross-Examination

By Mr. Kenny:

Q. Mr. Pizzo, you said that you went fishing for albacore? A. Yes, sir.

Q. After the albacore came in, when was that during [1036] the strike?

A. Well, it was about two weeks later from the strike beginning. It was two weeks later, maybe two or three weeks.

The Court: Let me see now. The albacore came in then or you went out then?

The Witness: No, I went out.

The Court: You went out to fish?

The Witness: Yes.

The Court: I do not think you understood counsel's question.

The Witness: I went out once before the strike was over, one week before the strike was over.

The Court: One week before the strike was over you went out and caught no albacore?

The Witness: Yes.

(Testimony of Vito Pizzo.)

The Court: Now counsel asked you when did the albacore come in.

Q. (By Mr. Kenny): I should say, when did you hear the albacore was running?

A. The albacore was maybe all month already.

Q. As a matter of fact, that was a particularly unusual good month for albacore, wasn't it?

A. Well, I think so.

Q. When the fishermen catch albacore they don't deliver that to the fish dealers, do they; they deliver the albacore to the canneries?

A. Yes, that's right.

Q. So when the albacore starts running the fishermen forget all about the fish dealers?

A. Yes.

Q. And they go fishing for the albacore?

A. Yes.

Q. Why is that? Because albacore brings more money, isn't it?

A. Yes.

Q. And they are fishing for the cannery?

A. Yes.

Q. And, so, as a matter of fact, you were just one of many fishermen who during the strike went out of the fresh fish fishing and started fishing for the high-priced albacore for the canners, is that right?

A. Yes.

Q. And that June was in your memory a notable month because the albacore came early that June, didn't they?

A. That's right. [1038]

* * *

ALBERT J. DEUTER

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. O'Malley:

Q. What business are you in, Mr. Deuter?

A. Ice business, ice delivery salesman.

Q. Were you engaged in that business?

A. With the Union Ice Company in San Pedro, California, in the wholesale end of it at the fish market wharf.

Q. Do you make deliveries to the fish dealers at the wharf at San Pedro?

A. Every day.

Q. How long have you been doing that, Mr. Deuter?

A. Twenty-two years.

Q. Directing your attention specifically to the 29th day of May of 1946 were you engaged in that business at that time?

A. I was.

Q. Do you know the defendant, F. R. Smith?

A. I do. [1042]

Q. I wonder if you can point to him here in the court room? Is he here?

A. The gentleman over there in the green shirt (indicating).

(The defendant Smith stood up.)

Q. (By Mr. O'Malley): Very well. On that date did you have a conversation with the defendant Smith?

A. I did.

Q. Where did that conversation take place?

(Testimony of Albert J. Deuther.)

A. At the end of the fish market wharf as I drove my truck down with the first load of ice for the day's work.

Q. In San Pedro? A. In San Pedro.

Q. And can you tell us what was said by you and what was said by the defendant Smith? Tell us in your own language what he said to you and what you said to him?

A. As near as I remember, Mr. Smith told me that he would go with me down the wharf to the different customers and see that I gave them the amount of ice that they had phoned in for me to take down to them, and after that there would be no more deliveries, that that would be all that I could deliver. [1043]

Q. Normally how much ice do you deliver to the fish dealers in San Pedro, during the month of June, on a daily basis?

A. Approximately 120 blocks, 125.

The Court: One hundred twenty what?

The Witness: Blocks of ice.

Q. (By Mr. O'Malley): Approximately what is the weight of that ice?

A. That would be about 21 tons; about 35,000, 38,000 pounds, somewhere along in there.

The Court: A day; daily.

Q. (By Mr. O'Malley): During the month of June did you thereafter make deliveries of ice to the fish dealers in San Pedro?

A. After the 1st of July. During June I made no deliveries, all during the month of June.

DONALD COLEGROVE

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. O'Malley:

Q. Will you state your full name again?

A. Donald Colegrove.

Q. Do you live in San Pedro? A. Yes, sir.

Q. What company are you affiliated with?

A. The Union Ice Company.

Q. Union Ice Company?

A. Yes, that is right.

Q. What is your position or job with that company?

A. I am the route superintendent. [1045]

* * *

Q. In their plant at San Pedro?

A. The Harbor District.

Q. What is your work or your duties in the connection?

A. I take care of all delivery of ice, dispatch it, no matter where it goes, just the distribution of it.

Q. Does that include the distribution of ice to the fish dealers at San Pedro? A. Yes, sir.

Q. Now directing your attention specifically to the 28th day of May 1946, I ask you if you had a conversation with anybody with respect to the delivery of ice to the fish dealers in San Pedro.

A. Yes, I received a phone call—the gentleman,

(Testimony of Donald Colegrove.)

I don't remember his name, but he said he was an official of the Fishermen's Union.

Mr. Margolis: Just a moment. I object to any conversation at this point as not responsive.

Mr. O'Malley: Very well.

Q. Did you receive a telephone call?

A. Yes.

Q. What was said?

Mr. Margolis: Just a moment. I object to that as insufficient foundation; incompetent, irrelevant and immaterial.

Mr. Garrett: Same objection.

Mr. O'Malley: Your Honor, there is at issue here a conspiracy.

The Court: The objection is overruled.

Mr. O'Malley: Very well.

Will you tell us what was said?

A. He said he was an official of the Fishermen's Union and asked me to cooperate by refraining from my trucks to go into the fish markets during the strike, or during that period.

Q. Is that all that was said?

A. No. That is what he asked me, and I told him that our men belonged to the Teamsters Union and I would abide by their decision.

* * *

Q. Did you thereafter make deliveries to the fish dealers in San Pedro during the month of June?

A. No, just the one day; a part delivery on the 29th. [1047]

* * *

(Testimony of Donald Colegrove.)

Mr. Garrett: I move to strike the entire testimony of this witness on the ground it is not binding on any of the defendants.

Mr. O'Malley: Your Honor, there is at issue here a conspiracy. I think it is quite proper as circumstantial evidence.

The Court: The motion is denied.

* * *

Cross-Examination

By Mr. Margolis:

Q. In addition to delivering ice to your customers, that is, to the customers of Union Ice Company, that company sells ice to customers who come to the plant and pick up ice, is that correct?

A. Yes, sir.

Q. Do you have anything to do with the sale of ice to customers at the plant of the Union Ice Company?

A. Well, I don't actually do it myself, but I have charge of it.

Q. Are you familiar with all of the sales that are made?

A. Well, naturally; not every little sale that is made, no sir.

Q. Do you know whether or not during the month of June, 1946, any of the fish dealers from San Pedro to whom you [1048] had previously delivered ice came to the Union Ice Company and picked up ice?

(Testimony of Donald Colegrove.)

A. There were some trucks in there. I wouldn't say for sure they were from the San Pedro markets or not. There were very few, but there were some.

Q. There were some fish dealers' trucks in there, that is correct, isn't it? A. Yes.

Q. And they picked up ice? A. Yes.

Q. And that was during the month of June 1946?

A. Yes.

* * *

Redirect Examination

By Mr. O'Malley:

Q. Do you know whether or not those trucks were from the fish markets at San Pedro?

A. No, I don't.

Q. You don't know of your own knowledge?

A. No, I don't.

Mr. O'Malley: That is all.

The Court: How much ice did they pick up during the month of June?

The Witness: I really couldn't say because that was [1049] done on a cash basis. It was very little.

* * *

KNUD JORGENSEN,

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name, sir?

The Witness: Knud Jorgensen.

The Clerk: Your address?

The Witness: 1380 Thirteenth Street, San Pedro.

(Testimony of Knud Jorgensen.)

Direct Examination

By Mr. O'Malley:

Q. What business are you in, Mr. Jorgensen?

A. In the cold storage business.

Q. Where are you engaged in that business?

A. 663 South Fries, Wilmington.

Q. What is the name of the company with which you are affiliated?

A. With the Union Ice and Storage Company.

Q. Do you have a position with that company?

A. Yes.

Q. What is that position?

A. Assistant manager.

Q. What is the nature of the business of the Union Ice Company? Could you just tell us very briefly and generally what services are provided by that company?

A. We sell ice and deliver ice to the fish markets and [1051] around town to the public and restaurants, and so on, and we also freeze fish.

Q. You also freeze fish?

A. Yes. That is the only type of cold storage facilities we have down there, fish freeze.

Q. Is that service available to the public generally? A. Yes.

Q. Do you provide that service to the public generally?

A. Yes, it is a public cold storage.

Q. That includes fish dealers and fishermen?

A. Anybody.

(Testimony of Knud Jorgensen.)

Q. Anybody who applies for the service?

A. Yes.

Q. Very well. Do you normally sell, in the course of your business, sell ice to the fish dealers in San Pedro? A. Yes.

Q. Directing your attention to the month of June, were there any sales made to the fish dealers in San Pedro? I refer to the month of June of 1946.

A. Yes, during the strike they had down there the fish dealers from San Diego and up north from Seattle, they shipped fish in to our plant, that was unloaded on the platform, and stayed there, we didn't touch it, we didn't handle it at all, it stayed there until the wholesale dealers themselves came and picked it up from our platform. [1052]

Q. Were they consigned to the fish dealers in San Pedro?

A. Consigned to the fish dealers in care of Union Ice and Storage Company.

Q. Where did those consignments originate, if you know?

A. We had quite a few shipments from the Star Fisheries in San Diego.

Q. Any others?

A. I believe a couple from the Union Fish Company in San Diego; and we had quite a few from Seattle, I don't know exactly who they were from in Seattle. We had Los Angeles-Seattle motor trucks, bringing fish in there.

(Testimony of Knud Jorgensen.)

Q. What happened with respect to those fish that were consigned to your place of business?

A. Well, they was unloaded on the platform, stayed there until the dealers came to pick them up, because I notified them.

Q. Can you tell us approximately what your normal volume of ice sales to fish dealers in San Pedro is during the month of June in a normal year?

A. I am awfully sorry, I can't tell you that. That is really out of my department. I only have to do with the cold storage. I can't tell you.

Mr. O'Malley: Your witness. [1053]

Cross Examination

By Mr. Margolis:

Q. Mr. Jorgensen, as I understand it, the Union Ice Company not only freezes but also stores fish that is frozen, is that right? A. Yes.

Q. What is the capacity of the Union Ice Company for freezing and storing fish at any one given time?

A. About 375 tons. That is the storage capacity. Freezing capacity per day is 20 tons.

* * *

Q. (By Mr. Margolis): You freeze 20 tons a day, you can store a total of 375 tons?

A. That's right.

Q. Is that storage capacity generally full?

A. Usually is, yes.

Q. Of course, when it is full, then, although anybody can come to you as a customer, if you haven't

(Testimony of Knud Jorgensen.)

any space you can't let them store fish there, is that right? A. That's right.

Q. And you can't freeze fish for them?

A. Correct. [1054]

Q. So a fisherman or fish dealer could come to you and store fish if and when you have storage capacity? A. That's right.

Q. If you don't have storage capacity, why, you can't accept it?

A. We turn quite a bit down right now.

Q. You have regular customers, do you not?

A. Yes, sir.

Q. Who are your regular customers that store fish with you?

A. Many customers is the wholesale dealers in San Pedro.

Q. Are those the fish dealers about whom you have been talking concerning the delivery of ice?

A. Yes.

Q. Those to whom you did not deliver ice during the month of June? A. Yes.

Q. Those are your main customers?

A. Yes.

Q. How much of that storage capacity of that approximately 375 tons do they take up?

A. I would say take up about 65 to 70 per cent.

Q. Who takes up the rest?

A. We have several dealers in Los Angeles.

Q. You have several dealers in Los Angeles?

A. Yes.

Q. Who else?

A. Several brokers in Los Angeles.

Q. Who else?

(Testimony of Knud Jorgensen.)

A. That is just about all.

Q. So, let's see if I have got it straight. Between the fish dealers in San Pedro, the fish dealers in Los Angeles, and the brokers in Los Angeles, your storage capacity is kept pretty well filled up all the time, is that right?

A. It is, yes.

* * *

Redirect Examination

By Mr. O'Malley:

Q. Mr. Jorgensen, do you select your customers, or do you determine them upon the basis of first come first serve?

A. We do first come first serve. We are not allowed to—it is a public cold storage.

Q. If anybody comes along and wants cold storage space and it is available, you make it available to them? [1056]

A. Yes.

Q. In the order in which they apply for that storage space?

A. Yes.

* * *

Recross Examination

By Mr. Margolis:

Q. As far as what has happened in the past is concerned, you have done practically no storage of fish for fishermen, isn't that right?

A. That's right. We did a few times, but, maybe,—I would say about one per cent—one-tenth of one per cent.

Q. Just a few pounds?

A. Just a few pounds.

Q. That a fisherman will bring in?

(Testimony of Knud Jorgensen.)

A. That's right.

Mr. Margolis: That is all.

The Court: Have they ever come to you with fish when you didn't have space for them?

The Witness: That did happen.

The Court: When?

The Witness: That happened—a long time ago, about [1057] six, seven years ago.

The Court: Six or seven years ago?

The Witness: Yes. They couldn't sell it on the market, and they would come in and ask us if we could store the fish.

The Court: It has not happened in the last six or seven years?

The Witness: No. [1058]

Q. (By Mr. Margolis): Now actually the more fish that comes in at any given time, the more your storage capacity is filled, is that correct?

A. Yes.

Q. When the fish dealers down at the wharf buy a lot of fish at one time, then they come to your place and store that fish and your fish capacity is filled up, is that right? A. That is right.

Q. This occasion that you remember six or seven years ago, when there was an exceptionally large run of barracuda, isn't it a fact that this is what happened: that first of all the fish dealers came in and brought in a lot of barracuda, filled up your storage space capacity, and then later on when some of the fishermen came and tried to get storage space they couldn't get it, is that right?

A. That is right. [1059]

R. R. RIPLEY,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Schwartz:

Q. What is your business or occupation, Mr. Ripley?

A. Superintendent of the Railway Express Agency at Los Angeles.

Q. What is your place of business?

A. 357 Aliso Street.

Q. Down here at the Union Station?

A. Correct.

Q. What are your duties as superintendent of the Railway Express Agency in Los Angeles?

A. Well, as superintendent of the Railway Express Agency I have a division which in addition to including Los Angeles, includes what might be termed the metropolitan area, San Pedro and Long Beach and Pasadena, Van Nuys—

The Court: Santa Monica?

The Witness: Yes, sir.

The Court: Redondo?

The Witness: Yes, sir.

The Court: Generally Los Angeles County?

The Witness: It is. It comprises most of the county.

Q. (By Mr. Schwartz): What type of express shipments is included in your [1061] duties as superintendent?

(Testimony of R. R. Ripley.)

A. Well, I have jurisdiction over the movement of all classes of express. We handle practically every commodity that moves in transportation, which would be dry freight, perishables and money—all classifications of transportation.

Q. Just to fix the issue on the command of this division of the Railway Express Agency, do you have a superior over you? A. I have.

Q. What is his title?

A. General manager.

Q. Who is immediately under the general manager?

A. As far as the Los Angeles Division is concerned, I am.

Q. Mr. Ripley, in the course and scope of your duties as superintendent—strike that.

How long have you been with the Railway Express Agency? A. Twenty-one years.

Q. How long have you been superintendent of this division? A. Since April, 1943.

Q. Since April, 1943, and in the course and scope of your duties as superintendent, has it come to your attention that certain shipments of fish, either frozen or iced, have [1062] been brought in and out of the port of San Pedro? A. Yes, sir.

Q. Was that true up to and including the month of May, 1946? A. Yes, sir.

* * *

Q. In the course and scope of your duties as superintendent of the Los Angeles division, is it the

(Testimony of R. R. Ripley.)

custom or the [1063] duties of the people who serve below you to report to you from time to time anything that occurs with reference to shipments handled by your company?

A. Well, they are expected to keep my office informed of any exceptions or irregularities in the service.

Q. Now were there any irregularities brought to your attention on or about May 29, 1946?

A. Yes. [1064]

* * *

The Court: How were these irregularities brought to our attention? Was it something you saw?

The Witness: Through a telephone report from our agent at San Pedro.

The Court: From your agent at San Pedro?

The Witness: Yes, sir.

Q. (By Mr. Schwartz): Was that in the regular course and scope of the agent's duties?

A. Yes, sir. [1065]

* * *

Q. Mr. Ripley, did you have occasion to go to San Pedro during the latter part of May, 1946, or early June? A. I did.

Q. Will you state what happened at San Pedro—strike that.

Do you recall the date, as near as you can remember, when that was?

A. Approximately May 29, 1946.

(Testimony of R. R. Ripley.)

Q. Now will you state what you observed—strike that.

Was that at the fish terminal?

A. The fish terminal is at San Pedro; yes, sir.

Q. Is that where you went on or about May 29, 1946? A. Yes, sir.

Q. Now will you state what you saw there?

A. I observed a picket line around the fish wharf, the [1066] location at which we deliver every day except Sunday quite a volume of fish and pick up from the same location quite a large volume of fish, which is forwarded to various destinations.

Q. Inside and outside of California?

A. Yes, sir.

* * *

Q. You say you saw a picket line. Will you describe what you saw rather than just labeling it?

Mr. Margolis: Objected to as incompetent, irrelevant and immaterial. [1067]

The Court: Overruled. And the objection may go to this entire line of testimony.

Mr. Anderson: Of course it is understood our running objection goes to this also, your Honor.

Mr. Margolis: My point was, in addition to our general objection, as we understand, which runs to this entire line of testimony, that the details of it are in any event immaterial unless it is for the purpose of identifying some person who was on the picket line.

(Testimony of R. R. Ripley.)

The Court: The objection is overruled. The objection is understood to have been made to each and every question with the same ruling on this line of questioning.

* * *

The Witness: The picket line consisted of quite a few men, and if I may be permitted to estimate the number I will do so, and I would say eight or ten men, who were at one end of the wharf, and some of which were indicated to me as being pickets. [1068]

* * *

Mr. Andersen: Move that that be stricken as hearsay, your Honor.

The Court: How were they indicated to you? Did you see them?

The Witness: If I remember correctly, some of the men were wearing bands indicating their membership.

The Court: Motion denied. Go ahead.

The Witness: And upon inquiry of the pickets I asked who was the head picket, and I was told that the head picket was a man by the name of Smitty.

I then found Smitty and we had a very pleasant conversation, the substance of which was to the effect that they did not want our trucks to cross their picket line.

* * *

Q. (By Mr. Schwartz): Do you see him in the courtroom?

(Testimony of R. R. Ripley.)

A. I think that is that gentleman right over there. I am not sure.

Mr. Schwartz: May the record show that the witness identified the defendant F. R. Smith?

Q. Proceed.

A. I explained to Smitty—I will call him that not knowing his other name—that we had quite a volume of fish in transit which had already left the shipping points and which we were obligated to make delivery to these receivers. [1069]

He agreed to permit the fish which were then in transit to be made delivery by our own vehicles to the receivers at San Pedro. However, they would not permit us to pick up outbound shipments from these shipper.

* * *

Q. Now thereafter did you again contact or have a conversation with this man Smitty, whom you identified, or any other person connected with this organization, Local 36?

A. A few days after I again called at the picket line [1070] and was informed at that time that——

* * *

A. That if we proceeded beyond what we had agreed to, that is, that we would deliver only the traffic then en route and not pick up outbound shipments, that our own office in San Pedro would be picketed. [1071]

Q. Now, what happened after that in so far as the shipments of fish to and from the landward side

(Testimony of R. R. Ripley.)

of the dock at San Pedro is concerned, with reference to your company?

* * *

The Court: I think the time should be fixed. You say "after that."

Q. (By Mr. Schwartz): Immediately after the second conversation.

A. As far as the shipments are concerned, we proceeded to deliver the received shipments as long as they moved.

Q. As long as they what?

A. As long as they moved. However, we discontinued picking up outbound shipments and the fish dealers delivered what shipments they had to our office in San Pedro with their own trucks.

Q. How long did that situation obtain?

A. That situation obtained, as I recall, during the duration of the strike, until such time as the strike was discontinued. [1072]

* * *

Q. (By Mr. Schwartz): Mr. Ripley, following your conversation with Smitty, or defendant F. R. Smith whom you identified—and we will make this that first conversation,—did you thereafter send any information to your agents in points outside of Los Angeles with regard to the acceptance of fish shipments? A. I did. [1073]

* * *

Q. (By Mr. Schwartz): Do you have copies of the wires that you sent out?

A. Yes, sir.

(Testimony of R. R. Ripley.)

Q. Do you have them with you?

A. Yes, sir.

Q. May I see them, please?

A. (The witness handed some documents to counsel.)

* * *

The Court: Yes, it may so show.

(A number of documents were marked for identification Government's Exhibits 15, 16, 17, and 18.) [1074]

* * *

(The documents referred to were received in evidence and marked Government's Exhibits 15, 16, 17, 18 and 19, inclusive.)

Mr. Schwartz: I would like to read Government's Exhibit 15 to the jury. [1079]

* * *

Will you stipulate that these are identical telegrams?

Mr. Margolis: Yes. They are all identical except for the address to which they go.

Mr. Schwartz: The same telegram, according to Exhibit 16, was sent to Mr. C. M. Hall, Superintendent, Railway Express Agency, Inc., San Francisco, California.

By Exhibit 17 to Mr. C. I. Fitzgerald, Superintendent, Railway Express Agency, Inc., Seattle, Washington.

And by Exhibit 18 to Mr. F. C. Rokey, Superintendent, Railway Express Agency, Inc., Sacramento, California.

(Testimony of R. R. Ripley.)

I should like to read Government's Exhibit 19.

* * *

Cross-Examination

By Mr. Margolis:

Q. Mr. Ripley, I believe you testified that your first conversation with Mr. Smith, whom you have identified as one of the defendants, was on the 29th day of May, 1946, is that right?

A. I think I said on or about the 29th day of May.

Q. It was before the first of June?

A. I think so, although I am positive.

Q. Is there any particular which fixes the date in your mind?

A. The date of these telegrams—the telegrams were sent following my conversation with Mr. Smith, if I remember correctly.

Q. They were sent on the same day?

A. I say they were sent following my conversation with Mr. Smith, and I can't say positively the exact date that I did talk to Mr. Smith, but it was at the inception of the strike down there.

Q. Then if the telegrams, as they appear to be, are dated May 29th, 1946, then it would be at least your testimony [1083] that you talked to him either on May 29th or before May 29th?

A. That is my recollection, although I am not positive about the date.

Q. Now, in that conversation with Mr. Smith, you said to him, did you not, that if the fish were not delivered—the fish that had already been

(Testimony of R. R. Ripley.)

ordered and were on the way—were not delivered, that that fish would be caused to spoil and would have to be thrown away, is that right?

A. That's right.

Q. And Mr. Smith replied to you that certainly neither he or anyone else involved wanted anything like that to happen, isn't that right?

A. That's right.

Q. And that, of course, there would be no objection whatsoever to the delivery of that fish, is that right?

A. That's right.

Q. In fact, that it would not be considered as a violation of any principle of respecting a picket line for the delivery of that fish to be made, because permission to cross the picket line would be given, is that right?

A. That referred to the fish that might be in transit at that time, that's right?

Q. That's right. And did you not tell Mr. Smith at that time that it was the policy of the company to respect picket lines in all disputes of this kind?

A. At this time I do not recall my exact conversation with Mr. Smith. It was to the effect, however, that we did—I am referring now to our drivers—attempt to cross picket lines providing there wasn't a threat of violence or a threat of picketing our own premises.

Q. I see. If there was no threat of picketing that you did attempt to cross picket lines, is that right?

A. No threat of violence—did you say picketing?

(Testimony of R. R. Ripley.)

Q. Violence or picketing, did you say?

A. That's right.

Q. Mr. Smith made no threat of violence, did he?

A. No, he made no threat of violence, but, however, he stated that he did not want our drivers to cross the picket line in picking up outbound shipments from their places of business, and the delivery of shipments that might be moved after those that were presently in transit.

Q. Then you suggested to Mr. Smith, did you not, that if he or the union did not want your concern to pick up fish at the dealers, that a letter be sent to your company so stating, isn't that right?

A. No, I don't recall that.

Q. You don't recall any such suggestion?

A. No, not asking that a letter be sent.

Q. Would you say that you did not say that?

A. I don't recall that I did; and it isn't customary for us to ask the union representatives to send us letters to that effect. [1085]

Q. Well, did you say to him that if such a letter was sent that then following your usual custom no further fish would be accepted at the places of business referred to?

A. I recall no conversation pertaining to letters with Mr. Smith.

Q. In any event, you sent the wires giving instructions to the various persons as indicated by Government's Exhibits 15, 16, 17 and 18, being

(Testimony of R. R. Ripley.)

the telegrams that you have produced, before you received any letter from Mr. Smith, isn't that so?

A. I don't recall the date of the letter. It is introduced as an exhibit, I believe. What is the date of their letter?

Q. The date of the letter appears to be May 31, and I notice that written in pencil on there are the words and letters: "Received 5/31/46, 11:50 a.m.?"

A. That is right.

Q. Isn't that an indication that this letter from Mr. Smith was received by your company on May 31, 1946, the date which the letter bears?

A. That is right.

Q. And the letter is in evidence as Government's Exhibit 19; that is right, isn't it?

A. That is right.

Q. And the telegrams which I have previously referred [1086] to, 15, 16, 17 and 18, were sent on May 29, 1946? A. Correct.

Q. Before you received the letter from the union? A. That is right.

Q. And the purpose of sending those telegrams was to give instructions as indicated therein and to state the facts upon the basis upon which those instructions were being given, is that right?

A. The telegrams are self-explanatory. They indicate that they were sent at the consent of the consignees after I talked to the fisher dealers at San Pedro.

Q. When you talked to Mr. Smith on May 29, you told him, did you not, that you thought that

(Testimony of R. R. Ripley.)

the union in saying that it would raise no objection to the delivery of fish in transit was being very fair? A. I did.

Q. And you thought the manner in which the whole transaction was being handled was fair and reasonable upon the basis of your past experience, is that right?

A. Well, it was fair to permit us to make delivery of the transffic in transit, but I didn't go along with their refusal to permit us to pick up outbound shipments from the fish dealers.

Q. Did you discuss that with him?

A. I did. [1087]

Q. What was said about that?

A. They objected to us picking up outbound shipments.

Q. He objected? A. Yes, sir; Mr. Smith.

Q. And you said nothing about that, is that right?

A. I said nothing to Mr. Smith about it.

Q. Yes.

A. I remember correctly, I tried to persuade him to permit us to cross the picket lines with our trucks to pick up these outbound shipments because our trucks were going through the picket line for the delivery of traffic that was in transit, and I pointed out that as long as our trucks were there and their fish was in the refrigerator boxes ready to be packed, that we ought to be permitted to pick up the outbound traffic. However, that was not agreed to.

(Testimony of R. R. Ripley.)

Q. You asked him if he would give you permission to do that, is that right? A. Yes, sir.

Q. Now, I think you stated in some part of your testimony that during the month of June 1946 you did not, aside from the fish that was in transit at the beginning of that month, deliver any fish to the San Pedro dealers, is that right?

A. That is right.

Q. You did deliver fish to other dealers in Los Angeles [1088] County?

A. Yes, we delivered fish to other dealers that might not be picketed.

Q. Was there any others picketed besides these?

A. Not to my recollection at this time.

Q. Now as a matter of fact, it is true, is it not, that customarily you receive fish for many, many dealers in Los Angeles aside from those on the San Pedro wharf?

* * *

The Witness: We do receive fish for many receivers in Los Angeles.

Q. (By Mr. Margolis): Do you know approximately how many?

A. I never checked it. I would say as a rough guess [1089] we probably receive fish in the whole city of Los Angeles for probably a hundred dealers.

* * *

Q. Isn't it your best judgment, your best estimate, that the number is considerably in excess of a hundred?

(Testimony of R. R. Ripley.)

A. I have never checked it. I wouldn't want to wager a guess on it. You are talking about people who receive fish by express?

Q. That is right.

A. There are many dealers that do not receive fish by express.

Q. But your best estimate at this time would be about a hundred?

A. Express receivers is approximately a hundred.

The Court: That includes restaurants, hotels and the like?

The Witness: No. He mentioned fish dealers.

The Court: Just the dealers?

The Witness: Fish dealers.

Q. (By Mr. Margolis): In addition, are there restaurants, [1090] hotels and the like who receive fish through your company? A. Yes, sir.

Q. About how many of them are there?

A. I wouldn't venture a guess on that.

Q. More than a hundred, would you say?

A. No, I wouldn't say that there is more than a hundred hotels and restaurants that receive fish by express. That is confined principally to the large hotels and the large restaurants. The smaller ones I presume get their fish locally.

Q. When you say "locally" you mean from the dealers, not the fishermen as a local source?

A. From the dealers; yes.

(Testimony of R. R. Ripley.)

Q. Isn't it true that of the total volume of incoming fish which you handle, a relatively small percentage comes into the dealers at the San Pedro wharf?

* * *

The Witness: Are you referring wholly to just inbound or outbound shipments or both?

Q. (By Mr. Margolis): I am referring just to inbound [1091] shipments.

A. I would estimate that on received traffic about 40 per cent of the fish goes to San Pedro dealers that we receive. [1092]

Q. That is handled through your company?

A. Handled through our company, yes.

Q. You have already testified that you handle fish shipped out of Los Angeles, as well as fish shipped into Los Angeles; that is true, isn't it?

A. That is right.

Q. Are there any other concerns or dealers who ship fish out of Los Angeles aside from the San Pedro dealers to whom we have referred?

A. Yes, sir.

Q. Do you have any basis for estimating whether more fish is shipped out of Los Angeles than is shipped into Los Angeles, or vice versa?

Mr. Schwartz. By the Railway Express Company?

Q. (By Mr. Margolis): You understand that all of my questions are directed to shipments by your company, the Railway Express Company?

(Testimony of R. R. Ripley.)

A. That's right. Well, I would say that the outbound movement slightly exceeds the inbound movement. [1093]

* * *

Q. (By Mr. Margolis): That is correct, isn't it, that San Pedro fish dealers are not the only concerns or dealers who ship fish out of Los Angeles?

A. Correct; yes, sir.

The Court: What percentage do they ship of the outbound?

The Witness: Well, I would say that on outbound traffic the San Pedro fish dealers forward about 60 per cent of the outbound traffic originating in Los Angeles.

The Court: All right.

Q. (By Mr. Margolis): During the month of June, 1946, aside from the San Pedro fish dealers concerning whom you have already testified, you continued to ship fish in and out of Los Angeles in accordance with your usual practice, is that not so? [1094]

A. That's right.

* * *

Q. Isn't it a fact that the total volume of incoming and outgoing fish during the month of June, 1946, handled by your concern was approximately the same as the total volume handled in other Junes, if you know?

A. I would like to be in a position to give you a definite answer to that, but I couldn't without referring to records. But to my recollection there

(Testimony of R. R. Ripley.)

was less fish in and out of Los Angeles—and I am talking about our terminal here—during the month of June during the fishermen's strike than there was other months when they weren't tied up in strike trouble.

Q. You couldn't be sure of that?

A. No, I can't, but it is my recollection, and that is the way you framed the question, I believe.

Q. Do you know how much fish came into Los Angeles during the month of June, 1946?

A. No, sir.

Q. Do you know how much fish went out of Los Angeles during the month of June, 1946? [1095]

A. No, sir.

Q. Do you know how much fish went into Los Angeles during the month of June, 1945?

A. No.

Q. How much fish went out of Los Angeles during the month of June, 1945? A. No, sir.

Q. Do you handle the dealers at Santa Monica?

A. The dealers at Santa Monica receive and forward some fish by express.

Q. Do you recall that during the month of June, 1946, the volume of fish which they handled, both receiving and shipping, increased pretty substantially?

A. No, I don't recall that there was any noticeable increase at Santa Monica.

Q. Do you remember that there was not?

A. Any noticeable increase, we would have observed it and it wasn't brought to my attention that

(Testimony of R. R. Ripley.)

there was any noticeable increase in or out of Santa Monica during the month of June.

Q. Would you say definitely that there was not?

A. I say any substantial increase, I might put it that way; if there would have been a small increase, it would have probably gone unnoticed, but any substantial increase would have required additional equipment and it would have been [1096] brought to my attention, I am quite sure.

* * *

Redirect Examination

By Mr. Schwartz:

Q. Mr. Ripley, did I understand you to say, in answer to one of Mr. Margolis' questions, that with regard to your trucks going through a picket line, that you would not ask your trucks to go through where there was a threat of violence?

A. That is right.

Q. Or a threat of picketing your establishment?

A. Yes, sir.

Q. You answered Mr. Margolis' question with regard to whether or not you considered this to be a fair way to handle the situation in regard to permission to handle the incoming shipments en route, is that correct?

A. Yes. [1097]

* * *

Q. (By Mr. Schwartz): In this conversation with Mr. Smith in which you stated that it was a fair way to handle the situation, was there any comment by you or Mr. Smith as to the fairness of the so-called union's position in this matter?

(Testimony of R. R. Ripley.)

A. I don't recall that I expressed any opinion as to the union's position as far as their grievances might be concerned in contributing to this strike. I did mention that I felt it was fair in permitting us to make delivery of the traffic that was en route, and I was rather disappointed that he wouldn't permit the outbound business to be picked up by our trucks. [1098]

* * *

Q. (By Mr. Schwartz): You were asked by Mr. Margolis to give an estimate or a guess as to the number of dealers in percentages of traffic; would your company's records show those figures as to the number of dealers involved or the amount of traffic involved?

A. For any given period our records would indicate to whom we delivered fish traffic and from whom we picked up fish traffic.

Q. And your company was served with a subpoena duces tecum for those records, was it not?

A. Yes, sir.

Q. And they were furnished to us?

A. Yes, sir. [1099]

* * *

EARL C. TIPPENS

the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Voir dire

Mr. Schwartz: Now, if the Court please, at this time I would like to interrupt, if I may. I would like permission to excuse this witness for the time being.

* * *

Mr. Schwartz: I want to state to the Court that we arrived at a solution of this matter. We have agreed that they may go to the Railway Express Company offices and see these records, under which circumstances they will not object to these documents.

The Court: How about Mr. Garrett?

Mr. Garrett: If you will pardon me just a moment, I [1118] would like to confer with Mr. Andersen.

(Conference between defense counsel.)

Mr. Schwartz: I think if we do that we can shorten this matter.

Mr. Garrett: That is satisfactory.

The Court: All right. You may withdraw the witness.

You may be excused until called again by counsel.

(Witness temporarily excused.)

The Court: Next witness.

CLYDE M. BOSTON

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

* * *

Mr. Andersen: Mr. Schwartz, before you continue, is that Exhibit No. 20?

The Court: Yes. That was going from San Pedro. The one going to San Pedro will be given the next number.

* * *

Mr. Schwartz: I have it here. No. 20 is LCL fish traffic from San Pedro; and this is LCL fish traffic to San Pedro.

Mr. Andersen: No. 21 is to San Pedro?

The Clerk: Yes.

(The document referred to was marked Government's Exhibit No. 21 for identification.)

Direct Examination

By Mr. Schwartz:

Q. Mr. Boston, what is your business or occupation?

A. I am district accountant, Railway Express.

Q. What are your duties as district accountant for the Railway Express?

A. Well, I supervise the auditing of the accounts from the offices throughout the country, and which includes the records, delivery records, forwarding records.

Q. Of what area does your office take in territory?

(Testimony of Clyde M. Boston.)

A. It covers Southern California, Arizona and part of New Mexico. [1120]

Q. Now as district accountant, do you have under your custody and control any records of the Railway Express Agency?

A. Well, we have all the delivery records.

Q. You have what?

A. All the delivery records, delivery receipts.

Q. And what are those delivery records?

A. Well, it is a transcript of the receipt we issue for the shipment when it is offered to us, and that is the record of delivery which we call the delivery sheet.

Q. If a consignor of merchandise ships goods or fish from a point, let us say, in Seattle to a point San Pedro, California, what kind of record, if any, will your office have of that transaction?

A. We have what we call a delivery sheet which shows the point of origin and the date it was shipped, the shipper's name, the consignee, and description of the article, weight and charges, and the signature of the consignee.

Q. And are those delivery sheets filed in your office? A. They are.

Q. Are they kept there under your custody and control? A. They are.

Q. With reference to a consignment of goods or merchandise or fish from San Pedro to some other destination, will your office get a record of that transaction?

(Testimony of Clyde M. Boston.)

A. We get a copy of the receipt issued for that shipment, which carries similar information or about the same information as the delivery record. It is a carbon copy.

Q. How are those delivery sheets or slips filed? Will you describe the filing system?

A. First they are filed by the delivery—rather, I would say, according to the delivery office by—

Q. What is the delivery office?

A. The office that makes delivery of the shipment to the consignee.

Q. That is the point of destination?

A. Destination.

Q. All right.

A. And those records are arranged by a point of origin and in date order, forwarding date order.

* * *

Q. By. Mr. Schwartz: Do you have with you any sample copies of these slips about which you have just been testifying? A. Yes.

* * *

Mr. Schwartz: Will you mark these, please?

The Clerk: 22 and 23.

(The documents referred to were marked Government's Exhibits 22 and 23, for identification.)

Mr. Andersen: Are they one exhibit?

Mr. Schwartz: No; two exhibits, 22 and 23.

Q. (By Mr. Schwartz): I show you what has been marked for identification as Government's Exhibit 22, Mr. Boston, and will you tell us what that is?

(Testimony of Clyde M. Boston.)

A. That is a sample of delivery record on a shipment from Fresno, California, to Bell, California.

Q. And is that the kind of document that we would have with reference to a shipment—a consignment of fish, let us assume, from Seattle to San Pedro?

A. Similar to that. Or it might be on a white one. This means that charges were prepaid; and the white one, charges are to be collected from the consignee.

Q. Referring to this white one which you have just talked about, which has been marked as Government's Exhibit 23, for identification, will you tell us what that is?

A. That covers a shipment from Detroit to South Gate, California?

* * *

Q. (By Mr. Schwartz): Was that the kind of slip or document that would be employed for the purpose of a consignment [1124] of fish from San Pedro to some other point?

* * *

The Witness: No. If it was from San Pedro, going to the point he mentioned, it would be a form, I would say, identical to that.

The Court: Identical to that? That is to say, if it were sent collect?

The Witness: Sent collect, yes.

The Court: If it were sent prepaid it would be identical to Exhibit 22, is that right?

The Witness: That's right.

(Testimony of Clyde M. Boston.)

Mr. Schwartz: We offer in evidence Government's Exhibits 22 and 23.

The Court: Admitted.

(The documents referred to were received in evidence as Government's Exhibits 22 and 23.)

Q. (By Mr. Schwartz): Mr. Boston, what would be entailed in the bringing to this court room of records showing the consignment of fish from San Pedro to points outside of the state of California from November 21, 1945, to and including June 30, 1946?

Mr. Andersen: May it please the court, I think that is kind of unnecessary. That is an improper question. I think the government has stipulated that we may have access to all of the records applicable to these exhibits.

Mr. Schwartz: That is right.

Mr. Andersen: And we haven't requested them to be brought into court.

Mr. Schwartz: The purpose of the question, your Honor, was merely to demonstrate to the court and jury—

The Court: I think they are entitled to lay a foundation. I think they should lay a foundation as to why the originals are not here. Objection overruled.

Mr. Andersen: May it please the court, we are not urging the objection. The stipulation is that all of the background information will be made available to us.

(Testimony of Clyde M. Boston.)

Mr. Schwartz: That is correct.

Mr. Andersen: And we are not going to object to the introduction of the compilation?

The Court: You are not? [1126]

Mr. Andersen: No.

The Court: Exhibits 20 and 21?

Mr. Schwartz: That is right. It was so stipulated, but I thought it might be well to have in the record the reason from the standpoint of business convenience of not bringing in the original records. If you will stipulate, Mr. Andersen——

Mr. Andersen: There is no sense in our stipulating if the government is going to make apologies for something.

Mr. Schwartz: We are not apologizing for anything.

Mr. Andersen: Then I submit the question is improper, your Honor.

The Court: The question is not improper, if you press for it, but if you are satisfied to introduce Exhibits 20 and 21, the compilations, in evidence, then there is no objection and they are in evidence. That is the only reason you have this witness here, to lay a foundation to get them into evidence.

Mr. Andersen: Yes, your Honor.

The Court: Do you offer Exhibits 20 and 21 in evidence?

Mr. Schwartz: I haven't yet.

The Court: Do you now?

Mr. Schwartz: Not yet, for the reason that I would like to show to the court and jury from what these were compiled. After that we have no objec-

(Testimony of Clyde M. Boston.)

tion to their going to the Railway Express Company and seeing the originals. [1127]

The Court: I see what you mean.

* * *

The Witness: You asked the question, what would be involved in producing the records?

Mr. Schwartz: That is right. [1128]

The Witness: From San Pedro or to San Pedro?

Mr. Schwartz: From San Pedro to points outside of the state of California.

The Witness: During what period?

Mr. Schwartz: November, 1945, through June, 1946.

The Court: I think what counsel is getting at, of what do those records consist.

The Witness: What I was thinking of there, your Honor, the outbound record is what we call a 9-year record, and for 1945 those copies would be destroyed.

Q. (By Mr. Schwartz): You said 9-year record?

A. Nine months—pardon me. Did I say 9 years?

Q. Yes.

A. I meant 9 months. We wouldn't have the outbound record.

Q. This is March, 1947. How far back to your records go that you have now?

A. About 9 months. That would be back to about——

The Court: That would be back 9 months.

The Witness: July.

(Testimony of Clyde M. Boston.)

Q. (By Mr. Schwartz): July, 1946?

A. Yes.

Mr. Andersen: I didn't understand that. From this point [1129] how far back do the records go?

The Court: They go back 9 months.

Mr. Andersen: From today?

The Court: Yes.

Q. (By Mr. Schwartz): Is that right?

A. Yes.

Q. What about the inbound?

A. Four years. We have those.

Q. So you have those? A. Yes.

The Court: When you compiled that statement there from November 21st, was that as far back as the outbound records went at that time? Do you know the date that you compiled those from?

The Witness: I believe the original request was for the period July, '45, to July, '46, and that compilation was made——

* * *

The Witness: That compilation was made during the latter part of July. And the record of the outbound shipments was tabulated back nine months.

* * *

Mr. Schwartz: Let me indicate here that Exhibit 21 [1130] goes from July, 1945, through June, 1946.

The Court: He said he has all those records, but I understood his testimony was that all the other records are destroyed beyond nine months back.

How much of a bulk is the records for one

(Testimony of Clyde M. Boston.)

month's shipments? Do you mix all the fish with everything else that originates from San Pedro?

The Witness: They are all together.

The Court: How much of a bulk is one month's records?

The Witness: One month's record consists of approximately 250 boxes of—I believe it is 18-inch boxes, each containing around 2500 delivery records.

The Court: 250 boxes a month approximately?

The Witness: Approximately.

Q. (By Mr. Schwartz): And those records that are available are at the office at 347 Aliso Street?

A. They are.

Q. And, Mr. Boston, if counsel for the defendants come to your office will you make those records available to them?

Mr. Andersen: What is the address?

Mr. Schwartz: I think it is 347 Aliso.

The Witness: No, 645 South San Pedro.

The Court: Where is the accounting office?

The Witness: 645 South San Pedro. [1131]

Q. (By Mr. Schwartz): Is that where your office is, Mr. Boston? A. Yes.

Q. And if Mr. Andersen or Mr. Kenny or any of the attorneys come to your office, will you make the records available to them? A. Yes.

* * *

Mr. Schwartz: We offer in evidence Exhibits 20 and 21.

Mr. Garrett: I would like to ask a question first on the offer of, I think it is No. 20.

The Court: Have you finished with this witness?

(Testimony of Clyde M. Boston.)

Mr. Schwartz: Yes, I have finished with him.

Cross-Examination

By Mr. Garrett:

Q. Is 20 the compilation of the outgoing shipments?

The Court: Yes, 20 is from San Pedro.

Mr. Garrett: I want to ask the witness whether this compilation, which is No. 20, for identification, goes, as I understand from November, 1945, through June, 1946.

The Court: It shows on the face of it.

Mr. Garrett: I beg your pardon?

The Court: It shows on the face of it. What does it show?

Mr. Garrett: It says: L.C.L. fish traffic from San Pedro, California, Railway Express Agency. And it starts in November, 1945, and runs to June, 1946.

Q. (By Mr. Garrett): Is that your understanding of this compilation?

A. There are some months in there that we didn't have the outbound record. For certain months those outbound records are distributed that we don't have.

Q. You mean months between November, '45, and June, '46?

A. November, '45—I believe March, '46, is one month, I believe.

The Court: March, '46, is missing?

The Witness: I think that is the one. About three or four months out of each year. [1133]

(Testimony of Clyde M. Boston.)

The Court: Why don't you look at that, counsel? I mean, it is there.

Mr. Garrett: He is right. There is just a nice blank sheet here for March, 1946, without anything on it.

The Court: Are there any other months missing there?

Mr. Garrett: Here are some entries for November and for December, January——

The Court: All right. Now, what do you want to ask the witness?

Mr. Garrett: To answer your question: some for February, none for March, some for April, some for May, some for June.

Q. (By Mr. Garrett): Are the delivery slips for March, 1946, not available in your office?

A. On the outbound shipments?

Q. On the outbound shipments.

A. No, they are not.

The Court: I understood his testimony that no delivery slips on the outbound shipments are available beyond nine months back from this date.

After you prepared that compilation you continued to disburse or destroy—what do you do with these records, destroy them?

The Witness: Destroy them.

The Court: A soon as they become nine months old. Whoever figured out this nine months business? [1134]

The Witness: Interstate Commerce Commission. That is the authorized period.

(Testimony of Clyde M. Boston.)

The Court: It sounds like more than one person had something to do with it.

Q. (By Mr. Garrett): I take it, then,—I am commencing to understand—that none of the delivery slips supporting any part of this compilation offered as Government's Exhibit No. 20 are available in your office now, is that the fact?

A. On the shipments moving from San Pedro?

Q. That's right.

A. We don't have any of those.

Q. They are all destroyed?

A. No; the delivery receipt would be at the destination point.

The Court: You don't destroy them?

The Witness: We don't destroy the delivery record.

Q. (By Mr. Garrett): But you destroy the only record you keep?

A. Of the forwarding record.

Q. You have no forwarding record on any of these shipments contained in Government's 20 in your office?

A. We have for nine months. [1135]

* * *

Mr. Andersen: May it please the court, I was going to make the same point that Mr. Garrett made when I heard the witness' explanation. As I understand it, with relation to Exhibit 20 offered in evidence, none of the supporting data is available, that is, the data from which Exhibit No. 20 was compiled. I understand that it is all destroyed.

(Testimony of Clyde M. Boston.)

Mr. Garrett: I didn't understand that at the time I entered into this stipulation, your Honor.

Mr. Andersen: If that is so, I will object to the introduction of Exhibit No. 20 in evidence, because in our discussion with Mr. Schwartz our discussion was based upon the premise that the supporting data was available. So if there are no records available to us so that we can check——

The Court: Do you have any more cross-examination from this witness?

Mr. Andersen: No. It is only on objection to Exhibit No. 20, that is all. We don't object to No. 21, your Honor.

Mr. Garrett: I will ask one more question.

Q. (By Mr. Garrett): Is it not a fact that none of the records in your office upon which this Exhibit No. 20, on the outgoing shipments from San Pedro,—that none of those records upon which Exhibit No. 20 is based are now available [1136] in your office?

A. Exhibit No. 20 was compiled from the copy of the delivery record, and we don't have those. But the delivery sheet itself is available at the destination point. For instance——

Q. Wherever the stuff went, all these different points where it went? A. Yes.

Mr. Garrett: I think it is clear now. I ask to be relieved of my stipulation, your Honor, as to this Exhibit 20. I made my stipulation with the understanding that I would have access to the source of the material.

(Testimony of Clyde M. Boston.)

Mr. Schwartz: That was my information at the time, that they were available.

Mr. Andersen: It is not the fault of Mr. Schwartz. It was just a mistake of fact.

The Court: Have you any further questions of this witness?

* * *

Mr. Andersen: We were just objecting to this exhibit. I have no questions of him.

The Court: I want to get the witness on his way and get someone else here.

Mr. Schwartz: Yes, I have a question to ask this witness. [1137]

Redirect Examination

By Mr. Schwartz:

Q. On Exhibit 20 there appears on there two columns, net weight and gross weight; can you tell us what those refer to?

A. The net weight is the weight of the commodity itself, fish. The gross includes the ice, packing; 25 per cent in most cases is added for ice.

The Court: How much?

The Witness: 25 per cent in most tariffs.

Mr. Schwartz: That is all the questions I have of this witness.

The Court: The witness may be excused.

Mr. Andersen: I have a few questions, your Honor.

Mr. Garrett: Is No. 20 in evidence?

The Court: No, I haven't ruled on it yet.

(Testimony of Clyde M. Boston.)

Mr. Andersen: No. 21 has not been offered, then, in evidence?

Mr. Schwartz: I offered them both.

The Court: No. 21 is in evidence.

Mr. Andersen: Then I have a few questions.

The Court: 20 I will reserve ruling on.

Cross-Examination

By Mr. Andersen:

Q. I notice, Mr. Young, that on Exhibit 21 there are [1138] quite a few skips where no weight is shown. Is there any reason for that?

A. Well, I don't know, unless they weren't iced.

Q. Is that your only explanation of that?

A. Or it wasn't clear on the records.

Q. Maybe the writing on the tag would be illegible, or there would be no icing, or,—that is, no tare weight? A. That is right.

Q. That would be your only possible explanation of it, is that right? A. I would say so.

Q. Generally speaking, with respect to Exhibit No. 21, and I assume that you personally are familiar with this compilation, isn't that true?

A. It was done in my office. Of course, I didn't do the detail. [1139]

* * *

(Conference between counsel.)

The Court: Why don't we defer this conference to some recess period? We have the jury here and the witness. Let us [1141] move on to something else.

(Testimony of Clyde M. Boston.)

Mr. Boston, is it customary in the course of your regular business from time to time to make compilations such as Exhibit No. 21 or Exhibit 20 for identification?

The Witness: Not frequently; occasionally.

The Court: Occasionally?

The Witness: Yes.

The Court: It is done at the request of an outsider or some official of the company?

The Witness: An official of the company; yes.

The Court: Some official of the company?

The Witness: Yes. Usually through the office of the company to us.

The Court: Through the official of the company to you.

The Witness: Yes. This request I believe came through Mr. Ripley's office, the superintendent.

The Court: Did it come to you through Mr. Schwartz or Mr. Dixon or Mr. Rubin?

The Witness: I think the first information we got on it is through Mr. Ripley's office.

The Court: Did he give you a telephone instruction on it or a memorandum?

The Witness: That he would send up some men to draw off the data.

The Court: Did he send up some men to draw off the data? [1142]

The Witness: Yes.

The Court: You mean you didn't compile these by your own people?

(Testimony of Clyde M. Boston.)

The Witness: No, it was compiled by the employees at the local office, which is customary.

The Court: Employees of the local office?

The Witness: Yes.

The Court: Instead of employees of the central accounting office.

The Witness: That is right.

The Court: I see. All right.

Mr. Schwartz: I would like to ask one question here, if I may, on Exhibit 20.

When these people that were sent to the local office, were sent to the general accounting office, and came to make this compilation, were they under your custody and control and supervision while they were making that?

* * *

The Witness: They worked under my general supervision.

Mr. Schwartz: While they are in your general accounting [1143] office?

The Witness: That is right, while they are in that office.

The Court: And do you recall when this particular occasion, when these people were there making this compilation?

The Witness: Yes, I remember it very well.

Mr. Schwartz: Do you recall what records they used for the purpose of making this compilation?

The Witness: Yes.

Mr. Schwartz: And you say that some of those records are now destroyed?

The Witness: Yes.

(Testimony of Clyde M. Boston.)

Mr. Schwartz: Is that correct?

The Witness: Yes.

Mr. Schwartz: We now renew our offer in evidence.

The Court: Apparently all of them are now destroyed.

Mr. Schwartz: No. Not Exhibit 21.

The Court: On Exhibit 20. On Exhibit 21 they are still here.

Mr. Schwartz: Let's ask him.

The Court: You asked him once and he says he has them for four years back.

Mr. Schwartz: Would the records for June, 1946, be in existence, by any chance?

The Witness: There are two different class of records. [1144]

Mr. Andersen: He said they are all destroyed.

Mr. Schwartz: I am interested in June 1946 at the moment.

Mr. Andersen: I am examining the witness. May I examine him? I will examine him on that point.

Mr. Schwartz: All right.

Q. (By Mr. Andersen): I understood from your testimony, Mr. Boston, that all of the records used for the compilation of Government's Exhibit No. 20 for identification, which I now hand you, have been destroyed, is that correct, sir?

A. From San Pedro?

Q. Yes.

The Court: Here is a calendar.

(Testimony of Clyde M. Boston.)

The Witness (examining document): That covers the period.

Q. (By Mr. Andersen): That goes back to May?

A. Nine months period would all be destroyed.

Q. They would all be destroyed?

A. That is the copy which is the outbound.

The Court: Would June be destroyed?

The Witness: June I guess would not be destroyed.

The Court: Do you destroy them at the end of the month or from day to day? [1145]

The Witness: No, at the end of the month.

The Court: At the end of the month?

The Witness: Yes. It is authorized nine months record, and then they can be destroyed any time. I can't say right offhand just which last month has been destroyed but they are due to be destroyed or we have authority to destroy them at the end of the nine months period.

Mr. Schwartz: In addition to our offer of the document in evidence, we will still stipulate that they can see June if it is still in existence.

The Court: Will you issue an order when you return to your office this afternoon that whatever records you have on this in so far as San Pedro origination shipments are concerned, be not destroyed until further order of the Court?

The Witness: I would be glad to do that.

The Court: So that if they are available then you can have them for June.

(Testimony of Clyde M. Boston.)

Mr. Andersen: I assume that your Honor's ruling on the objection will be reserved?

The Court: Yes, I will reserve the ruling.

Any more questions?

Mr. Andersen: Just a few more, your Honor.

The Court: All right.

Q. (By Mr. Andersen): I assume, so far as the destruction of records is [1146] concerned and this time period, that would apply to all of the other ports in this area, is that correct?

A. Nine months on the forwarding records, and four years on the delivery records. That would apply to all points.

Q. Do you have available in your records the figures showing shipments to other fish dealers in this area, that is, others than the ones on the Muni dock in San Pedro? You have all those available?

A. Consigned to other dealers in San Pedro?

Q. In the county, in Los Angeles.

A. Yes, we would have those, the delivery records.

Q. And the same rule would apply there as to the nine months and the four years, is that correct?

A. That is right.

* * *

Q. In other words, this document does not purport to be a compilation of all fish coming into the area but just limited to the small area shown on the exhibit, is that correct? [1147]

The Court: Is it limited to San Pedro or to your whole division office?

(Testimony of Clyde M. Boston.)

The Witness: It is limited to San Pedro. It says "to San Pedro."

Q. (By Mr. Andersen): You would have the other records available, that is, other incoming records? A. Yes.

Mr. Andersen: And I assume that those records would be available to us also pursuant to the general stipulation, may it please the Court.

Mr. Schwartz: No, because they have nothing to do with the charge in this case, if the Court please, as to what shipments, if any, made by dealers in Fresno, California, or in Newport Beach, or anywhere else.

Mr. Andersen: May it please the Court, that may be the Government's theory of the case, but they are introducing this evidence for the purpose of commerce, and I believe that we can show from the evidence, which is undoubtedly available, that there was no diminution of the flow of commerce at all. That would be the purpose for which we would want to use the evidence.

I think if there is evidence available which is or may be competent, that the Government in all fairness should stipulate that that evidence may be made available to us. [1148]

Mr. Garrett: I join in the statement of counsel.

Mr. Schwartz: In the area of fishing that is material. It is the area limited to the charge in the indictment. That refers to the fishing area and to the ports involved.

(Testimony of Clyde M. Boston.)

Mr. Andersen: I assume that the stipulation is broad enough to permit us to inspect the records of the company represented by this witness. [1149]

The Court: He says it is not.

* * *

Mr. Andersen: Then if the stipulation is not intended to be broad enough so that we may inspect the records of this witness to the extent that we deem necessary for a proper defense of the people before the court, then we ask to be relieved of the stipulation, may it please the court. In all fairness we think that we should be able to show that commerce or traffic in fish was in no wise affected at all.

The Court: You are entitled to have the records; you are entitled to the processes of the court to secure them. This witness has testified only concerning the shipments in and out of San Pedro, and the records only relate to the shipments in and out of San Pedro.

I do not think that that opens the door, in so far as cross-examination is concerned, to go into the whole matter of the amount of fish that is shipped in or out of the entire portion of Southern California.

If you deem it necessary or advisable you may have the processes of the court to secure such evidence from this or any other witness that you deem necessary to secure for your case. There is no ruling for me to make. If you wish to be excused from your stipulation, that is not my concern because [1150] I never approved the stipulation.

(Testimony of Clyde M. Boston.)

Mr. Schwartz: I would like to say here, your Honor, that it wasn't stipulated that anything but San Pedro was involved because that is what we were talking about, but I am quite agreeable that he may see the records, if they want to show them to him, of Santa Monica or San Diego or any of the fishing ports involved in the charge. But I am not concerned with Fresno or Bakersfield——

Mr. Andersen: Nor am I. We are only concerned with Los Angeles County, your Honor.

Mr. Schwartz: That is not in the charge. We are talking about San Pedro in Los Angeles County, and Newport Beach, in whatever county that is in, or Santa Monica. And as to those, if you want to see those records and they want to show them to you, it is perfectly all right.

The Court: We are getting no place very fast. You withdraw from the stipulation?

* * *

Mr. Andersen: Yes, your Honor. [1151]

* * *

The Court: And you do not?

Mr. Schwartz: No.

The Court: If you cannot agree, you may withdraw from the stipulation.

* * *

Mr. Andersen: Then I assume that Exhibit 21 is not in evidence as of this moment?

The Court: You withdrew from your stipulation, and do you wish to move to strike it or object to it?

(Testimony of Clyde M. Boston.)

Mr. Andersen: Yes, your Honor.

The Court: State the grounds of your motion.

Mr. Andersen: I move to have the court strike its order admitting Exhibit No. 21 into evidence on the grounds heretofore stated before the recess.

The Court: On the ground that there is no foundation?

Mr. Andersen: Yes, your Honor. [1152]

The Court: I will grant your motion and reserve ruling on the government's motion to admit Exhibit 21 in evidence.

Have you any other questions of this witness?

Mr. Andersen: That is all at this time.

The Court: Do you have any further questions of this witness?

Mr. Schwartz: I am not clear whether the record is clear at this time as to whether the foundation evidence which we adduced from this witness applies to Exhibit 21, which we assumed was in evidence. If that is the record, I am willing to let it go. [1153]

* * *

The Court: Mr. Boston, on this Exhibit 20, for identification, there are several columns headed: Shipper, Date, Commodity, Net Weight, Gross Weight, Charges, and Designation; do you from time to time make up a report for the official or fiscal purposes of your company, in the regular course of business, showing the shipment of all commodities from, let us say, San Pedro, under these headings?

The Witness: No, sir.

(Testimony of Clyde M. Boston.)

The Court: Do you make up any kind of a monthly report showing the destination, shipper, the commodities, the gross weight, or charges——

The Witness: Only on specific request.

The Court: Only on specific request?

The Witness: Yes.

The Court: Do you make up any report showing, from your [1155] points of origin, points of destination, the total quantity of merchandise shipped from, say, San Pedro to Washington, D. C., or some other point in the United States—do you make up any form?

The Witness: No regular report.

The Court: What kind of report do you make regularly, monthly?

Mr. Andersen: That assumes that there is one, your Honor.

The Court: Do you make some?

The Witness: A report of traffic handled?

The Court: Yes.

The Witness: Not in our office.

The Court: You don't make it up?

The Witness: That is usually made up in the other offices.

The Court: Made up in the local offices?

The Witness: Yes.

The Court: That is to say, in San Pedro they would have a report of traffic handled, would they?

The Witness: I don't know just what reports they make. I don't think there is any regular report in that form, only on specific requests.

(Testimony of Clyde M. Boston.)

The Court: Well, is there any kind of report—what I am getting at is, does your company in your accounting system [1156] require some kind of a monthly report from each of the shipping offices of the freight or express originating from that point during that month?

The Witness: No, we do not. Just the number of shipments. There is a report of the number of shipments, regardless of the commodity.

The Court: Nothing concerning the commodity or the destination or the weight?

The Witness: No, sir.

The Court: All right. You had some other questions?

Mr. Schwartz: Yes.

Redirect Examination

By Mr. Schwartz:

Q. Mr. Boston, some time in July or thereabouts of 1946 was there a compilation made at your office concerning less than carload fish traffic to San Pedro from points outside of the State of California? A. To San Pedro?

Q. Yes, from points outside of the State of California.

A. We made that tabulation there.

* * *

Q. (By Mr. Schwartz): By whom was the compilation made?

A. It was made in my office by employees from the local [1157] office, the Aliso Street office.

(Testimony of Clyde M. Boston.)

Q. And while those employees were in your office making this compilation were they under your direction and control? A. That's right.

* * *

Q. (By Mr. Schwartz): I show you Government's Exhibit No. 21, for identification, and ask you whether that is a compilation which was made in your office as you just testified?

* * *

A. This is the report that was compiled from information obtained in my office.

Mr. Schwartz: We now offer in evidence Government's Exhibit 21, your Honor. [1158]

* * *

Recross-Examination

By Mr. Garrett:

Q. Mr. Boston, will you tell me just what you did to direct the persons who were making this compilation, which is Government's Exhibit 20, in performing that work, if anything?

A. I had an employee by the name of Bullard who had charge of that compilation.

Q. Who were the men who actually made it from the Aliso Street office?

A. I don't know their names.

Q. Had you ever seen them before?

A. Different ones came over there from the local office. Directly under Mr. Bullard.

The Court: Is Bullard in your office?

The Witness: Yes, sir.

Q. (By Mr. Garrett): Did you ever have occasion to give any instructions to any of these men

(Testimony of Clyde M. Boston.)

who were actually doing the work, the ones who were over from the Aliso Street office?

A. Instructions as to what information was desired was given to Mr. Bullard by Mr. Ripley's office, I believe. That is where the request came from.

Q. And you didn't, therefore, actually have any occasion to give any instructions to Mr. Bullard in connection with the work, because he got them from Ripley's office, is that right? [1159]

A. The request came through his office; he was told what information was desired.

Q. It was from Ripley's office to Bullard, is that right?

A. That's right.

Q. And the men who were actually performing the work, you didn't have any occasion to give them any instructions either?

A. Not individually, no.

Q. You haven't got yourself a copy of that compilation, have you?

A. No, I haven't.

Q. It wasn't delivered to you when it was completed, but it was delivered to Mr. Ripley's office, is that right?

A. Mr. Ripley's office, yes; not to me.

Q. You wouldn't know, then, why there aren't any figures for March, 1946, in the compilation, would you?

A. Of the outgoing movement? March, '46, on the outbound?

Q. That's right.

(Testimony of Clyde M. Boston.)

A. Yes, those records weren't available. That is one month the outbound records weren't available.

The Court: Do you know why they wouldn't be available for that month? Did they get lost?

The Witness: No; they are distributed to various [1160] destinations for accounting purposes.

The Court: To other places?

The Witness: Yes.

Mr. Garrett: No further questions, if your Honor please.

The Court: Has anybody got any other questions of this witness?

Mr. Schwartz: No further questions.

The Court: You may be excused.

Mr. Garrett: Objected to; no proper foundation laid.

The Court: What is the offer now?

Mr. Schwartz: The offer in evidence was as to 21.

Mr. Garrett: On the testimony of this witness.

The Court: The objections are overruled, both 20 and 21 are admitted in evidence.

Mr. Garrett: There has been no offer of 20.

The Court: He offered that exactly 25 minutes of three, which is 30 minutes ago.

Mr. Andersen: May it please the court, do I understand with respect to Exhibit No.—

The Court: I have admitted both documents in evidence.

Mr. Andersen: I was just wondering if your Honor had overlooked the fact that the supporting data had been destroyed.

The Court: I have not. I am perfectly aware of what [1161] the witnesses have testified to. Both documents are admitted in evidence. Call the next witness.

Mr. Andersen: May it please the court, then, we would like, further, to examine Mr. Boston in relation to No. 20.

The Court: Counsel, Mr. Boston has gone. You had your opportunity, he was here, the offer was made, I asked repeatedly if anybody had any other questions, and just now I waited fully 30 seconds, a half minute, and looked at everybody and asked if anybody had any questions of Mr. Boston, and they had not.

Mr. Andersen: That is correct.

The Court: If you want Mr. Boston for any other questions, why, processes are available to you.

Mr. Andersen: Your Honor stated that he was going to have Mr. Boston inquire if those records were available, and I understood your Honor was going to reserve ruling until you determined whether the nine months records were available, and it was on that basis that we——

The Court: On whether or not June was available.

Mr. Andersen: Yes, of No. 20, and——

The Court: I have now admitted 20 and 21 in evidence, counsel. [1162]

DONALD H. ROBERTS

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name, please?

The Witness: Donald H. Roberts.

The Clerk: Your address?

The Witness: 10777 Richland Avenue, Los Angeles.

Direct Examination

By Mr. Schwartz:

Q. You are Mr. Roberts? A. Yes, sir.

Q. What is your business or occupation?

A. Vice-president of the West Coast Fast Freight.

Q. And what is your position with that company?

A. Well, I am vice-president and one of the owners.

Q. What do you do as vice-president?

A. All the duties that an owner of a business would do; see that it runs, operates.

Q. What is the nature of the business of the West Coast Fast Freight Company?

A. Common carrier interstate by motor truck.

Q. Does your company handle shipments from points in the State of Washington to points in the State of California? A. Yes, sir.

Q. And that is handled by—— [1163]

A. By motor truck.

(Testimony of Donald H. Roberts.)

Q. Mr. Roberts, were you requested to make a compilation of fish shipments from Seattle and Washington points to Los Angeles and San Diego points for the period July 1, 1945, to July 1, 1946?

A. I was.

Q. And was such a compilation made?

A. Yes.

Q. Are the records from which the compilation was made still in existence? A. Yes.

Q. And they are at your office? A. Yes.

Q. Where is that office?

A. Porter Street in Los Angeles; 2474 Porter Street. [1164]

* * *

Mr. Schwartz: Yes. May we have this marked, please?

The Clerk: No. 24.

(The document referred to was marked Government's Exhibit No. 24 for identification.)

* * *

Q. (By Mr. Schwartz): Mr. Roberts, I show you what has been marked as Government's Exhibit 24, and ask you whether that document is [1166] a compilation that was made pursuant to request by members of the Department of Justice.

A. It is.

Q. Will you state the circumstances under which that document was compiled?

A. I think it was in reply first to a phone call—I don't know whether it was later confirmed in

(Testimony of Donald H. Roberts.)

writing for sure or not—but I compiled these figures and had them made up for you. I think you wanted them in a short period of time at that time, so I had the office go through all of the freight bills for the dates involved and list each and every shipment as indicated here, each shipment individually.

Q. Were the people who made up that document under your control and supervision?

A. Not directly. The office manager appointed the clerk to pull the bills and do the typing.

Q. Can you describe the records and documents from which this compilation was made, referring to Exhibit 24 for identification?

A. They are taken directly from freight bills.

Q. Will you describe them, their bulk, their size, their weight?

A. You mean describe the shipments?

Q. No, the record.

A. There is for each shipment that is moved under a [1167] bill of lading issued by a shipper a freight bill cut. The freight bill is about 5x8½, on a piece of paper, describing who the shipper is, who the consignee is, describing the merchandise, the rate, the weight and the total charges, collect or prepaid. And for every shipment tendered and accepted and delivered there is a freight bill so cut. The freight bills are numbered. They start with 1, with the inception of a company, or some low number, and go through numerically in order until you get up to 700 or a thousand, at which time you might start a new series of numbers. [1168]

(Testimony of Donald H. Roberts.)

Q. Are the freight bills filed according to destination points or points of origin?

A. Our freight bills are all filed strictly only in freight bill sequence number, numerical sequence is the only way in which we file.

Q. About how many such freight bills would you have in the course of a month?

A. In a month? 3,000.

* * *

Q. (By Mr. Schwartz): From points in Seattle and Washington to points in Los Angeles and San Diego? A. Yes.

Q. About 3,000 a month? A. Yes.

Q. What kind of commodities——

The Court: Just a minute. That is southbound from points north of here?

The Witness: Yes. [1169]

The Court: And not southbound from points south of here?

The Witness: No.

Q. (By Mr. Schwartz): What kind of commodities—— A. General commodities.

Q. And is there any tabulation or recording pertaining to different kinds of commodities, or are they all mixed?

A. We maintain no statistics as to types of shipments.

Mr. Schwartz: We offer in evidence Government's Exhibit No. 24, your Honor, limiting the offer to the destination points marked in this ex-

(Testimony of Donald H. Roberts.)

hibit as San Pedro, San Diego, Santa Monica, and generally any other ports mentioned in the indictment.

The Court: Let me see the exhibit.

Mr. Garrett: I would like to ask some questions on the foundation, your Honor.

The Court: These are all from the State of Washington, is that right?

The Witness: I think that is all from the State of Washington, points within the State of Washington, yes, sir.

The Court: And if I understand the witness correctly, this is all of the fish which your company handled from the State of Washington to points within the State of California for the period mentioned?

A. I couldn't tell you just what is on that list. I don't remember. [1170]

The Court: Well, look at it. Would that help you?

The Witness: Yes.

The Court: There are some to Riverside and——

The Witness: Yes, I had them compile a list of shipments to Los Angeles and San Diego area. If there are some here listed to Sacramento, I don't think they should be listed. I don't think you will find many other than just this Southern California area on the list.

The Court: In other words, this is to the Southern California area?

(Testimony of Donald H. Roberts.)

The Witness: Yes, Los Angeles and San Diego area.

* * *

The Witness: Yes.

The Court: I would say if the exhibit is admissible it ought to go in in its entirety.

Mr. Kenny: That is the point we were going to make, your Honor. [1171]

* * *

Voir Dire Examination

The Court: Any other questions?

Mr. Andersen: The only other question we have, may it please the Court, is that we should like to have the privilege of inspecting the supporting records for this. I assume Government would have no objection to that. Is that correct, Mr. Schwartz?

Mr. Schwartz: No, I think under the circumstances we are not——

The Court: You don't have any objection?

The Witness: No, not at all.

The Court: But I want to limit the person who goes down to inspect them.

Mr. Andersen: It would be Mr. Fuss or one of counsel, your Honor.

The Court: Two persons?

Mr. Andersen: Yes.

The Court: One lawyer on behalf of the defendants and Mr. Fuss?

Mr. Andersen: That is, the defendants we represent, your Honor.

(Testimony of Donald H. Roberts.)

Mr. Garrett: Is it offered?

Mr. Schwartz: The document was offered.

The Court: Yes, he offered the document and then you said you wished to ask some questions.

Mr. Kenny: I think, your Honor, he offered it for a limited purpose and your Honor indicated it should be for all purposes.

The Court: If it is admitted it will be admitted for all [1178] purposes.

Mr. Schwartz: If the Court please, under those conditions I want to renew my offer for a limited purpose, and if the Court rules that it is to be admitted for all purposes if at all, I would withdraw my offer and ask that another compilation be made.

The Court: What is that?

Mr. Schwartz: I will ask that another compilation be made in conformance with my limited offer.

Mr. Kenny: Then, your Honor, we will offer it.

Mr. Garrett: Just a second.

The Court: Do you offer it?

Mr. Kenny: I think certain parts of it.

The Court: Do you offer it? If not, be seated and you can talk it over.

Mr. Kenny: We don't want to offer the part that he offered. If he offered the part he has, we want the rest of it in.

The Court: I think if any part of it goes in it ought to all go in.

Mr. Schwartz: I will renew my offer to let the whole thing go in, your Honor.

Mr. Kenny: That is all we want.

(Testimony of Donald H. Roberts.)

Mr. Garrett: Then, if your Honor please, I have my foundation objections. [1179]

* * *

Mr. Andersen: Before Mr. Garrett makes his statement, I want to just raise one question. I understand, may it please the court—at least, it is the practice to which I am accustomed—that in a situation like this where a compilation is introduced, with rights given opposing counsel to consult the basic documents, that thereafter if there is any difference or anything, or any variation that should be cleared up, that the witness on the stand may be recalled for further cross examination.

The Court: The witness' cross examination is not precluded.

Mr. Andersen: Precisely, that is what I understood.

The Court: In other words, as we did with Mr. Ross. Ross was here and returned to the witness stand for cross examination the following morning after you had examined his books, and that would certainly be the procedure here.

Mr. Garrett: I object to the admission of 24, for identification, your Honor, on the ground that no proper foundation has been laid, and upon the ground that the defendants are being deprived from having the opportunity to test the foundation for the document at the time it is admitted, and are being deprived of the rights that they should have in the nature of cross examination.

(Testimony of Donald H. Roberts.)

I further object to this particular document upon the ground that it is incompetent, irrelevant and immaterial, [1183] that it is hearsay, that it shows alterations on its face which are not a portion of the original compilation.

The Court: Where is the document?

Mr. Garrett: I refer now to the handwritten matter on the last page and the marks and notations on the first page.

(The exhibit was handed to the court.)

The Court: Go ahead.

Mr. Garrett: Of course, I refer to the fact that there is no statement as to point of origin, which is the purpose for which this document is founded, which is made in such a way that anybody would be responsible for perjury if the documents were not as represented, to-wit, the lack of any specific—

The Court: On the other hand, he has testified that it was from Seattle and the State of Washington, and all of these points are from the State of Washington.

Mr. Garrett: The document taken between its four corners, I make this point, your Honor, is one which does not state anything about the point of origin.

If your Honor please, my point is this, and as to this document the same is true of all other compilations which have been admitted up to this point in this trial: upon the express showing on cross examination, voir dire, foundation, it has appeared that

(Testimony of Donald H. Roberts.)

in practically all cases, except the case of the Railway Express records, the documents could have been [1184] produced and could have been produced easily in this court room, where they would have been available for the inspection and scrutiny of defense counsel while the witness was on the stand, so that he might be cross-examined on them as a matter of foundation, and as a matter of their applicability as compilations to the information contained in the books, prior to their receipt into evidence.

The documents which have been available supporting these compilations have not been produced in any case except one. The one case where those documents were produced, they were not produced in the court room and were only produced in the offices of the United States District Attorney, where their use was limited, and where their inspection for purposes of ascertaining the veracity of the compilation by comparison with them was restricted to the extent that in my opinion it must be said that an inspection was denied, substantially.

Now, the fact of the matter remains, and it may be said, that the defendants in this case have the right to subpoena these records themselves. That will involve almost, necessarily, in every case, if we subpoena the records themselves, putting them on in what would appear to me to be the only practical way to bring in the records ourselves, as part of our own case, that we will be forced to swear and be bound by testimony of witnesses who are hostile to

(Testimony of Donald H. Roberts.)

the defendants. I don't particularly speak of this witness here on the stand, [1185] but I speak particularly of the fish dealers who were testifying in this case and introducing compilations. I think there is sufficient——

The Court: There is only one complication by a fish dealer, and that was Ross.

Mr. Garrett: That is right. And I think that the evidence will show, before we are through here, and I believe the evidence already does indicate that Mr. Ross has an interest highly adverse to the defendants, that he may well be involved in a plan or design to involve them in criminal prosecution, in so far as he is able, for the purpose of solving his own labor difficulties. And I say that the defendants in order to find out what is back of his compilation shouldn't be put to the extremity of calling a man like that, or witness like that, as their own witness.

I say we have no right, as a matter of right, to recall any of these witnesses for further cross-examination, although that privilege may be extended by the court. I say that as a matter of——

The Court: You were not foreclosed from that at the time the opportunity for inspection was made, and the witness was not excused until you indicated that you had no further questions.

Mr. Garrett: I submit that the cross-examination of the witness Ross upon his records is a very unenlightening example [1186] of what will probably happen in the event of further attempts to test by the original records the compilations pro-

(Testimony of Donald H. Roberts.)

duced by these witnesses. I say to your Honor, particularly in the case of records such as his, or any of these records, except those of the Railway Express Agency, which I can see are too bulky for handling, there is no reason why they shouldn't be produced in court for the inspection of counsel, and that any record that can be produced in the offices of the Antitrust Division for inspection can just as easily be introduced in court where your Honor can control its use, and it will not be subject to the prosecuting party in this case.

The Court: There is no evidence that this man's records were in the offices of the Anti-trust Division. And except for Ross—and the records were made available to you—and the Railway Express Agency, there have been no other records involved.

Mr. Garrett: There is another point I wish to make. I will try to be very short.

Commerce is an element of the United States. The very statements made by the government attorneys in court indicate that if we attempt to go beyond those portions of the records basic to these compilations, which they deem proper for us to see, that we will not be permitted by any of these witnesses in inspections at their places of business to see any portions of the records they do not deem proper. [1187]

The Court: Counsel, the purpose of producing records here on an examination such as this is to determine their accuracy. In other words, if this document is an accurate reflection of those records, then the purpose of the cross-examination has been

(Testimony of Donald H. Roberts.)

completed, unless from the face of the records themselves concerning that which is in the document you have some other ground to show that they are not correct or accurate.

Mr. Garrett: There is another basis than accuracy, your Honor. A document accurate in and of upon his compilation from the documents from question of proof that it is adduced to sustain. For instance, it may be the documents this man has relative to shipments into Los Angeles proper may have just as important an effect on the question of whether or not there has been an effect on commerce during the months in question as the documents he has on the shipments into San Pedro. I think it has. I think it is just as important. The government's attitude is very clear here. They don't. They want to preclude us—they want to run a knife down Southern California——

The Court: On the basis that that is defensive matter.

Mr. Garrett: But the point I am trying to make is when compilations of documents are being adduced here for probative purposes by the government, we have a right to cross-examine the witness upon his compilation from the documents from which [1188] while he is a government witness—from the documents from which the compilation is made, and all of them, not merely the San Pedro portion, if you please, in the case of a limited offer like this. But if in those books there is information on the whole factor which the government has

(Testimony of Donald H. Roberts.)

opened up only with figures on the San Pedro factor, then we ought to have a right, as I say, to put in the evidence from the same witness while he is on the stand.

That is the risk the government takes when it offers the evidence, in the first place, having any relevant associated matter which may cast light upon the figures they offer brought out by the defense, while the government's case is on and while the witness is on the stand, and while the matter is fresh in the minds of the jury. It is just like cross-examination. The government can't bring out a portion of the books and then slam the door.

The Court: The government can bring out that portion of the books which they deem material.

Mr. Garrett: That is right.

The Court: And certainly when anybody asks a question concerning anybody's books it doesn't mean that everything in those books is subject to cross-examination or open to cross-examination, counsel.

Mr. Garrett: But it is cross-examination to bring out other parts of the books and ask the court whether the court [1189] deems those parts material to go before the jury as part of the cross-examination of the document or the witness, if your Honor please. And in the way we are proceeding, that isn't happening. We are being put, as a practical matter, to the risk of calling this entire budget of adverse witnesses as our own witnesses, and being bound by their statements and sustaining whatever harm they may choose to do us.

The Court: Are you finished?

(Testimony of Donald H. Roberts.)

Mr. Garrett: Yes, your Honor. [1190]

The Court: Do you wish to be heard?

Mr. Dixon: Not unless your Honor cares to hear my argument on the point. We feel that we have gone into the matter at length at other times and are satisfied with your Honor's ruling on the matter and that it is the law.

The Court: I think the books should be made available.

Mr. Dixon: Merely to check, as your Honor has stated.

The Court: To check the accuracy of what is in this document.

Mr. Dixon: That is right.

The Court: The ruling on the admissibility of this document will be withheld.

However, I am not going to instruct this witness or any other witness to turn over his books and records and give unlimited access to an examination of the entire business by defense counsel or their auditors. The thing that is material here is the commerce in fish in Southern California.

Mr. Dixon: That is right, your Honor. And all the government really has to do here is to show—I mean to make a case is to show—that the subject matter of restraint alleged to be imposed here, or of the conspiracy, namely fresh fish, is in interstate commerce. That is only material from a point of view of showing jurisdiction.

Mr. Andersen: With respect to the inspection——

(Testimony of Donald H. Roberts.)

The Court: What are you offering this for, then? [1191] What is this offered for?

Mr. Schwartz: This is on the charge of commerce, your Honor.

The Court: You have all kinds of evidence here that fish is shipped in interstate commerce. Is this just cumulative?

Mr. Andersen: That is all it is.

Mr. Schwartz: By way of being cumulative as well as being direct evidence of the man who actually ships the merchandise in interstate commerce.

The Court: One witness testifying to a fact is sufficient to prove it. Every one of the fish dealers has gotten on the witness stand and testified that they bought and sold fish in interstate commerce, and if this is just cumulative——

Mr. Schwartz: I agree there is a limit to the quantum of proof: If there are 12 or 13 dealers, we call 3. There are several hundred fishermen and we have called 15. Of course, you try to limit the quantum of proof, but it is a matter of judgment how much proof should be adduced on any given factor of the government's case, whether it be commerce or any other point. But I think it is certainly material in a matter which the court should be very interested in, to determine from the very man in the organizations that transport this merchandise in interstate commerce as to how they do [1192] their business and what happened with respect to the activities of the defendants as charged in the indict-

(Testimony of Donald H. Roberts.)

ment. Of course it is just one phase. We propose to follow this witness with another witness from that company.

Mr. Andersen: I don't believe that we would make an objection based upon the evidence being cumulative, because we think the government would have a difficult test in proving the commerce question. But with respect to the inspection of this witness' books, with respect to the witness Ross as well as this witness, we had, and have, no intention of making any untoward examination of the books, save and except as the inspection of the books may be reasonably limited by the nature of the testimony offered. When they offer the compilation they offer the books. The books are in legal contemplation in evidence. The compilation simply takes the place in evidence of the actual records in the office of the witness. So while inspection of the books, may it please the court, will be limited to matters which are material to the direct examination of this witness and proper examination of the witness as though the books were here. When the books are in evidence, and they are in evidence, they are in for all purposes material to the case.

The Court: What is the bulk of the records from which this document was taken?

The Witness: Freight bills are the only thing.

The Court: What is the size, would it fill this room, a truck, a suitcase, or what?

The Witness: The number of bills wouldn't fill—just a couple of file cabinets this long (indicat-

(Testimony of Donald H. Roberts.)

ing). They would have to be picked out of bills that would fill a room this size, eight or 10 feet square.

Mr. Andersen: Could I ask your address?

The Witness: 2474 Porter Street.

Mr. Dixon: I think the rule which your Honor is applying in this case is the rule of business convenience, which seems to be well recognized by the law for the reasons that practically all of these witnesses have testified to.

The Court: I think that I will instruct the witness to make his records available, that is, the records from which this exhibit was compiled, which is the freight bills, and when can you have your people down there to examine it?

Mr. Andersen: Well——

The Court: Tomorrow?

Mr. Andersen: We would have to get in touch with Mr. Fuss. Probably tomorrow, Friday or Saturday.

Are you open on Saturdays?

The Witness: Half a day.

Mr. Andersen: One of those three days. Possibly Friday would be the better day.

The Court: I will reserve ruling then and the witness [1194] will be temporarily excused, subject to the order of the court to return for further cross-examination, and defense counsel will take it up with the government when they will have their examiners available.

Mr. Andersen: It shouldn't be necessary for the government to be there. We will make no untoward

(Testimony of Donald H. Roberts.)

examination of the witness' records, your Honor. We don't want any names or anything like that. We just want to check the material things. I sort of feel that it is wrong to impose surveillance on us.

The Court: You have some auditors, do you not?

Mr. Schwartz: No, we do not have any auditors, but after the experience we had the last time I think it better be made pretty clear by the court just what they can or cannot do.

The Court: They can examine these freight bills. Is that what you call them?

The Witness: Yes.

The Court: From which this record was compiled?

The Witness: Yes.

The Court: You will communicate with the government and advise when your party will be there, and they will communicate with this witness here and the government, if they desire, may have a representative present at the same time. If they do not desire it they do not need to. [1195]

* * *

(The jury returned to the court room at 4:15 o'clock p.m.)

* * *

The Court: The ruling of the court on the matter presently under discussion, which was the offer in evidence of Exhibit for Identification No. 24, the objections of Mr. Garrett thereon, is as follows:

The ruling will be reserved. The witness may be temporarily excused to be recalled on order of the court for further cross-examination, if any parties

(Testimony of Donald H. Roberts.)

desire it. The witness will make available to the defendants the freight bills from which Exhibit 24 was compiled at such time as he shall receive word therefrom from government counsel, who will receive word from the defendants as to when they may desire to examine the books.

The defendants will be limited to one lawyer and to two auditors. Do you want to go down too, Mr. Garrett?

Mr. Garrett: No, I will send an auditor.

The Court: Mr Law?

Mr. Garrett: Either Mr. Law or some other person whom [1196] I will designate to the court.

The Court: Very well. Mr. Law and Mr. Fuss and one of the defense counsel.

The government may, if they desire, at the same time have one of their representatives present.

In the meantime Mr. Roberts may step down.

(Witness temporarily excused.)

The Court: Next witness.

H. L. KERSBERGEN

called as a witness by and in behalf of the government, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Schwartz:

Q. Mr. Kersbergen, what is your business or occupation? [1197]

(Testimony of H. L. Kersbergen.)

A. I am the local agent for the West Coast Fast Freight.

Q. How long have you been in that occupation?

A. Approximately 16 years.

Q. What are your duties as local agent for the West Coast Fast Freight?

A. The handling of the local operations.

Q. Just what does that entail?

A. The movement of the trucks, merchandise and the personnel.

Q. Give us some of the details?

A. It includes the unloading, the loading of vehicles, and the dispatching of the trucks, the handling of the drivers that are on the vehicles.

Q. Does your company handle shipments of fresh fish from points in Washington to the San Pedro fish markets?

A. Yes, we do.

Q. Do you have anything to do with that?

A. Yes, I do.

Q. Will you relate what that is that you have to do with those shipments?

A. After the trucks arrive in town, it is one of my duties to see to it that the trucks are dispatched to the proper destination and unloaded.

The Court: In the course of business, do they come [1198] to your depot first and then do you dispatch them around?

The Witness: That is correct: They come into the terminal first.

Q. (By Mr. Schwartz): Do you dispatch those particular trucks or the trucks unloaded and loaded on other trucks?

(Testimony of H. L. Kersbergen.)

A. Some of it is unloaded and handled on other equipment; some of it is dispatched on the line equipment direct.

Q. Do you direct the drivers where to deliver the merchandise, Mr. Kersbergen?

A. That is correct, sir.

Q. With respect to the shipments of fish to San Pedro, do you direct them as to where they are to take them?

A. That is right, sir.

Q. Where is the point of destination of San Pedro fish?

A. The majority of the San Pedro fish is destined to the pier.

Q. At the Municipal Fish Wharf?

A. That is right, sir.

Q. Now was that true up until and including the month of May, 1946?

A. Yes, I believe that is correct.

Q. Did any changes take place on or about the 29th of May, 1946, with regard to the consignment of fish to the fish [1199] dealers at San Pedro?

A. In the early part of 1946 we were instructed for a period to deliver the fish elsewhere than the pier.

Q. Early part of when?

A. Early part of 1946. I would say—I thought

(Testimony of H. L. Kersbergen.)

it was a little earlier than May. I am vague as to the dates. It is quite some time ago.

Q. Do you have any reference to a so-called strike? A. That is right, sir.

Q. Assuming that the date that that strike began was May 29, 1946, assuming that to be the date, what changes, if any, took place in the operations at your place of business with reference to consignments to San Pedro?

A. The fish for the duration of the strike were not delivered to the pier.

Q. Where were they delivered?

A. A portion of the fish were delivered to the Union Ice at Wilmington, a portion to the Ocean Foods, at Long Beach.

Q. At whose request were those shipments made to the points you have just mentioned?

A. We received instructions from the broker.

Q. Is that the usual course of business?

A. That is right, sir.

Q. And that condition existed, you say, for the duration of the strike?

A. That is correct.

Q. Do you know of your own knowledge what happened to those consignments after they were dropped at the points you have mentioned in Wilmington and Long Beach, was it?

A. Wilmington and Long Beach.

Q. Yes.

A. No, I don't remember.

(Testimony of H. L. Kersbergen.)

Q. Now, some time after the strike, or during this so-called strike, you say you resumed operations in a normal course of business as before?

A. Yes, that is right.

Mr. Schwartz: Take the witness.

Cross-Examination

By Mr. Andersen:

Q. As I understand it, sir, the only change about that time was that you delivered the fish to a different place, is that correct?

A. That is correct.

Q. The fish came in as they always had and you delivered them instead of to the dock, you delivered them to the ice company or at Wilmington or some other place there?

A. That is right. [1201]

* * *

ROBERT D. GANO

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: Robert D. Gano.

The Clerk: Your address?

The Witness: 3415 Tilden Avenue, Los Angeles.

Direct Examination

By Mr. Schwartz:

Q. What is your business or occupation, Mr. Gano?

(Testimony of Robert D. Gano.)

A. Terminal manager of the Los Angeles-Seattle Motor Express.

Q. Where is the Los Angeles-Seattle Motor Express?

A. Los Angeles; 1672 Staunton Avenue.

Q. What is the business of that company? What do they do?

A. Transfer of general freight; common carriers.

Q. From where to where?

A. Northwest to Los Angeles; Washington and Oregon.

Q. Washington and Oregon to Los Angeles?

A. Yes, sir.

Q. What kind of freight do they handle?

A. Well, all types of freight. To the south the general run is frozen fish, foods, and so forth.

Q. Is that accomplished by motor trucks?

A. Yes, sir.

Q. What are your duties as terminal manager of that company, Mr. Gano?

A. Charge of the office, and also the operations.

Q. Mr. Gano, did you some time last year receive a request from the Department of Justice to make a compilation of shipments of fish from points in the Northwest to this [1204] area?

A. Yes, sir, I did.

Q. And was such a compilation made up?

A. Yes, sir.

Q. And by whom was it made?

A. By our chief clerk, Jack Nichols.

(Testimony of Robert D. Gano.)

Q. Is Mr. Nichols under your supervision and control at your company? A. Yes.

Q. Was this compilation made under your general supervision and control? A. Yes, sir.

Q. What was the source of the information from which this compilation was made?

A. It was made up from manifests of the truckloads, and also the waybills or freight bills of each particular shipment.

Q. How were these records maintained at your company?

A. They were filed daily by numbers, freight bill numbers.

Q. What do these records show?

A. Shows the shipper, consignee, weight, and revenue of each shipment.

Q. About how many shipments a month does your company handle? [1205]

* * *

A. 200 per day.

Q. 200 a day. Was that true in 1946?

A. Yes, I would say it was.

Mr. Schwartz: Mark this, please.

The Court: 25, for identification?

The Clerk: Yes, your Honor.

(The document referred to was marked Government's Exhibit 25, for identification.)

Q. (By Mr. Schwartz): Mr. Gano, I show you Government's Exhibit No. 25, for identification——

* * *

(Testimony of Robert D. Gano.)

Q. (By Mr. Schwartz): —and ask you whether that batch of documents is a compilation which you just testified as having been made up from the records of your company.

A. Yes, sir, it is.

* * *

Q. (By Mr. Schwartz): This is a compilation showing the weekly figures of shipments by pounds of fresh fish and crustaceans to dealers, wholesalers, and any and all others located in the ports of Santa Monica, Rendodo Beach, San Pedro, Newport Beach, and San Diego, or to their warehouses, from any and all points outside of the State of California from [1206] July 1, 1945, to July 17, 1946. Is that what this document purports to contain, Mr. Gano?

A. Yes, sir.

* * *

Mr. Schwartz: Yes. We offer in evidence Government's Exhibit No. 25.

* * *

Voir Dire Examination

By Mr. Garrett:

Q. You say some of these figures came from waybills and some came from manifests. Was your waybill or manifest record, either one of them, incomplete so that your figures had to be supplied from the other? [1207]

A. You misunderstood me. They came from both manifests and waybills, which are both the same.

(Testimony of Robert D. Gano.)

The Court: They are both the same?

The Witness: Yes, sir.

Q. (By Mr. Garrett): Are those waybills which you also call manifests kept in your office here in the city? A. Yes, sir.

Q. Are they in charge of the bookkeeper or office manager whom you named?

A. Yes, sir, he has access to them.

Q. I beg your pardon?

A. Yes, they are in charge of the chief clerk.

Q. Do you have them audited at regular intervals? A. No, we don't.

Q. Is the information from those waybills copied in any books which you keep in the ordinary course of business?

A. It would be kept in the Seattle office, which is the head office of our firm.

Q. Your books are in Seattle, is that correct?

A. The main auditing books are in Seattle.

The Court: The data from which this material came from is here, as I understand?

The Witness: Yes.

Q. (By Mr. Garrett): Is it all here now?

A. Yes, sir. [1208]

Q. Have you ever been requested to bring any of it to this building? A. No, sir.

Q. At any time? A. No, sir.

Q. Were you ever requested to make any compilation based upon the shipments from out of state for the same period into other portions of Southern California than the sea coast ports which you have named?

(Testimony of Robert D. Gano.)

A. This is the only report we have made.

Q. You don't make up such reports in the ordinary course of your business, do you?

A. No, sir.

Q. You just made up this one specially at the request of the government, is that right?

A. That's right.

Q. And they asked you to report on shipments into these seaports only, is that right?

A. Yes.

Q. And to report only for the period to which they limited the survey, is that right?

A. That's right.

Q. And you haven't made any inspection of your waybills to determine how much fish was being delivered to points other than San Pedro, Santa Monica, in Los Angeles County during [1209] the period covered? A. No.

Q. Or any part of the period covered?

A. I have not.

Q. One more question: Do you carry into Los Angeles County from any points other than points to the north of Los Angeles?

A. We are interstate carriers, and all we can carry is from Oregon and Washington to Los Angeles or Southern California.

Q. You don't carry in here from any other states than Oregon and Washington?

A. That's right, we do not.

Q. Do you carry anything into Los Angeles County from points in California north of Los Angeles? A. No.

(Testimony of Robert D. Gano.)

Mr. Garrett: No further questions.

Q. (By Mr. Andersen): Do you have records available showing all shipments during the period of time covered by the proposed exhibit?

A. Yes, we have our freight bills.

Q. Showing shipments into Los Angeles County, as well as the sea ports that you have mentioned?

A. Yes, sir.

Q. You weren't asked by the government to prepare a [1210] list showing all shipments brought into this general area here, were you?

A. No.

Q. Simply those four or five ports that you mentioned? A. Yes, sir.

Q. But those records are available in your office here in Los Angeles? A. Yes.

Q. Where is your office?

A. 1672 Staunton Avenue.

Q. 1672 Staunton Avenue? A. Yes.

Q. Can you tell us if the amount of shipments brought into this entire territory, Los Angeles, during the month of June of last year were substantially the same as the amount in May of last year?

A. No, sir, I couldn't tell you that.

Q. From looking at these records could you tell us? A. No, I couldn't.

Q. Are you personally familiar with the records at all?

A. I had them made up, yes, sir. [1211]

* * *

Mr. Andersen: That is all.

(Testimony of Robert D. Gano.)

Mr. Schwartz: That is all, your Honor.

The Court: The document is admitted in evidence.

Mr. Garrett: Objected to on the same grounds——

The Court: Nobody said anything.

Mr. Garrett: I hope your Honor will permit me to state my objection before your Honor's ruling. I am not quite agile enough sometimes.

The Court: Go ahead and state it.

Mr. Garrett: I merely want to object to the introduction of 25 on the same grounds as stated in my objection to the introduction of Government's 24.

Mr. Andersen: I want to object on one ground. That is that I don't believe the government is within its rights in endeavoring to carve out from an area any particular area. In other words, as I understand the government's position, they claim there was an interference with interstate commerce in the area, and Los Angeles is certainly part of the San Pedro [1212] area.

The Court: I think we have gone over that, counsel.

Mr. Andersen: I want that as an objection.

The Court: Yes, it is noted.

Mr. Andersen: Secondly, I assume——

The Court: The witness will remain under the order of the court.

Do you desire to examine his books and records?

Mr. Garrett: Yes, we do, your Honor.

Mr. Andersen: Yes, sir.

(Testimony of Robert D. Gano.)

The Court: Very well. The witness will remain under the order of the court, and I will make the same order here as I did in connection with the last witness, which is to this effect, Mr. Gano: That upon order of the court you will return to complete any further examination or cross-examination that may be desired by the parties.

Mr. Andersen: I wonder if we could request the court to have the witness make a compilation——

The Court: Maybe you won't want it after you get down there.

Mr. Andersen: On Exhibit 24, the last one admitted into evidence, the compilation showed the fish brought into this general area. If the witness would compile a list showing——

The Court: I will make the same order here, that you [1213] can go down and look at it.

Mr. Andersen: All right, your Honor.

The Court: Counsel for the defense will designate one lawyer, and an investigator or accountant whose name is Fuss; Mr. Garrett will designate a man by the name of Law, or some other person if Law is not available, in which event he will name the person, and they will communicate with government counsel who will call you when they desire to go over the books and records; and government counsel may have, if they desire, but need not have, any one of their representatives present during the examination by Mr. Fuss, one of defense counsel, and Mr. Law. That should be before the expiration of this week?

Mr. Garrett: Yes.

(Testimony of Robert D. Gano.)

The Court: It will be some time before the expiration of the week.

Let us have this straight. What records did you use to take these from—just the waybills?

The Witness: Waybills. [1214]

* * *

The Court: All right. You will make available all of your waybills during the period covered, so that the parties I have indicated may examine them. Do you understand that now?

The Witness: Yes.

The Court: All right, Mr. Gano. [1215]

Mr. Andersen: I assume, may it please the Court, that we may examine the books or way-bills, whatever the documents are, with respect to this shipment into Los Angeles?

Mr. Schwartz: No.

The Court: Whatever way-bills he has from which these were compiled.

Mr. Schwartz: My it please the Court, this does not include Los Angeles.

The Court: I know it does not include Los Angeles.

Mr. Andersen: We would like to examine them with respect to Los Angeles, your Honor.

The Court: Whatever way-bills he has for the period covered by this document.

Mr. Andersen: That is good enough, your Honor.

The Court: Will be made available.

(Testimony of Robert D. Gano.)

Mr. Schwartz: Does that mean to include ports other than the one specified in the indictment?

The Court: Yes.

Mr. Schwartz: We object to that, if the Court please.

The Court: Objection overruled.

Do you understand that now?

The Witness: Yes, your Honor.

The Court: If there is any trouble about it, let me know.

The Witness: Yes, sir.

The Court: You may step down. [1216]

(Witness excused.)

The Court: You are excused subject to further call.

That is marked for identification No. 25?

The Clerk: Yes. [1217]

* * *

WILLIAM L. SIMPSON

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Schwartz:

Q. Mr. Simpson, what is your business or occupation?

A. I am dispatcher for the Los Angeles-Seattle Motor Express.

Q. Where is that?

A. 1672 Staunton Street, Los Angeles.

(Testimony of William L. Simpson.)

Q. How long have you been with that company?

A. About two and a half years.

Q. What are your duties as a dispatcher?

A. Well, I dispatch the loads to be unloaded, dispatch the trucks to pick up the loads going out of the state to points in Oregon and Washington.

Q. Among your duties, do you have to dispatch shipments of fish arriving from the northwestern part of the country to San Pedro markets?

A. Yes, I do.

Q. Will you state how you do that?

A. Well, the trucks come to our terminals, trucks and trailers, and the complete loads are unloaded, and fish for Los Angeles, Wilmington, San Pedro, Long Beach and San Diego is all in one truck. They are broken bulk in our terminal, put on smaller trucks, some of it, and some of it is straight loads dispatched to those destinations.

Q. Now in doing that, do you indicate to the drivers of these various trucks when they are to deliver these separate loads?

A. Yes, we do, and also their bills show where the loads are to go.

Q. Now with reference to the wholesale fish dealers at San Pedro, where do you direct the drivers to deliver the fish shipments?

A. To the fish wharf. [1224]

Q. The Municipal Fish Wharf?

A. Municipal Fish Wharf.

Q. At San Pedro?

A. Yes, sir.

(Testimony of William L. Simpson.)

Q. Now was that your practice and custom until some time up to the 29th day of May 1946?

A. Yes, sir.

Q. Now directing your attention to that date, were any changes brought to your attention?

A. Yes, there was.

Q. What changes in the practice of delivering fish to the fish dealers at San Pedro took place on or about that date?

Mr. Andersen: To which we will object as calling for a conclusion and opinion of the witness, and insufficient foundation laid, may it please the Court.

The Court: Objection overruled.

The Witness: Well, I dispatched fish down there to the Municipal Wharf and they seemed to have a picket line——

Mr. Andersen: Move that that be stricken as calling for a conclusion and opinion of the witness, they seemed to have.

The Court: The last section, they seemed to have a picket line, will be stricken as a conclusion.

The Witness: Well, they had a picket line.

* * *

Q. Were the shipments of fish that you dispatched to the dealers at San Pedro delivered to the fish dealers' place of business after the 29th day of May and during the month of June, to your knowledge?

A. No, they were diverted back. Some of them went to various——

(Testimony of William L. Simpson.)

Mr. Andersen: I move that be stricken as not responsive to the question.

The Court: The motion is denied. [1226]

Q. (By Mr. Schwartz): Go ahead.

A. It was diverted back to Los Angeles, to various dealers in Los Angeles.

Q. Go ahead.

A. I can give you the term of some of the shifts.

Q. You can give me what?

A. The places where they were rediverted.

Q. If you would. A. Standard Fish——

The Court: Wait a minute. Are you talking about the whole month of June or are you talking about the 29th of May?

Mr. Schwartz: I am talking about the period from the 29th of May, and the month of June.

The Court: Very well.

The Witness: Standard Fish came back to Western Fish; L. A. Fish and Oyster came——

Q. (By Mr. Schwartz): Where is Western Fish?

A. San Pedro——Western Fish is in L. A.

Q. Go ahead.

A. Los Angeles Fish and Oyster at San Pedro was diverted to National Seafood in L. A.

The Court: Is that all?

The Witness: Several others were diverted.

Q. (By Mr. Schwartz): Do you recall what they were, offhand? [1227]

A. I don't just recall where they were diverted. There were others that were diverted back. Holly got some of it.

(Testimony of William L. Simpson.)

Q. Who is Holly?

A. Holly Seafood at L. A. Some of it was diverted from San Pedro back to Freeman Certified Fresh Fish.

Q. At whose direction were these shipments of fish diverted to these places you have mentioned?

A. The direction was directed by the dealer at San Pedro. I, in turn, contacted him on the phone.

Q. Don't say what was said. Just tell us what happened.

The Court: You have answered the question.

Mr. Schwartz: All right.

Q. (By Mr. Schwartz): Did any of the shifts of fish which were diverted, as you have indicated, go to the Union Ice Terminal at Wilmington, do you recall?

A. Yes, there was some attempted to be delivered there, but was not delivered.

Q. You don't know why they were or were not? Or do you?

A. Only what my driver told me. [1228]

* * *

Q. By Mr. Schwartz: Was there a driver by the name of James Gassio, one of your drivers during this period? A. Yes.

Mr. Schwartz: Thank you.

The Court: On or about the first of July was the delivery of fish resumed as it had been previous to these diversions you speak of?

The Witness: I believe that is about——

The Court: In the same manner?

(Testimony of William L. Simpson.)

The Witness: Yes, about the same date. The exact date I don't remember.

Mr. Andersen: No questions.

The Court: You may be excused.

W. L. SCOFIELD

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name, sir.

The Witness: W. L. Scofield.

The Clerk: And your address?

The Witness: State Fisheries Laboratory, Terminal Island. [1229]

Direct Examination

By Mr. Schwartz:

Q. Mr. Scofield, what is your business or profession?

A. I am employed by the Division of Fish and Game, California.

Q. In what capacity?

A. In the Research Branch of the Bureau of Marine Fisheries.

Q. And what is your title?

A. Senior Aquatic Biologist.

Q. What are your duties as the senior aquatic biologist-

(Testimony of W. L. Scofield.)

A. I have been given charge of the fisheries statistical system in operation in the State.

Q. Where is your office?

A. At Terminal Island.

Q. Just what kind of an operation is that that you have charge of?

A. Well, we have a very complete system of fisheries statistics by which the catch of each fishing boat in the State is recorded daily.

Q. What is the extent of the territory over which your office has jurisdiction?

A. Well, the whole coast of California.

Q. The whole coast of California?

A. Yes. [1230]

Q. What kind of statistics is your office interested in?

A. Well, we are interested in the daily catch of each fishing boat.

The Court: The tonnage or the kind of fish?

The Witness: Both. The purpose is to get the return in fish per unit of fishing effort as an index to the changing abundance of fish in the ocean?

Q. (By Mr. Schwartz): Now as far as the gathering of that data is concerned, where do you get your information from?

A. Well, it is covered by state law that a fisherman selling fish shall be given a receipt by the buyer, and we are given a carbon copy of that receipt. So in that way we have the record of sales of fish.

Q. Now is there any other data—strike that.

(Testimony of W. L. Scofield.)

The Court: Is that what they call the fishing ticket?

The Witness: Yes.

Mr. Schwartz: Yes. I believe we have one of those in evidence.

Q. I show you what has been marked for identification—or are they in evidence, your Honor?

* * *

Q. (By Mr. Schwartz): I show you Defendants' Exhibit F for identification and ask you whether that is the receipt, the type of receipt, which you have just referred to.

A. No, that is not. These are the white and yellow copies. There are three copies. The original white goes to the fisherman, the yellow is kept by the buyer and the second carbon, a pink copy, is delivered to the State. [1232]

Q. Except for the color is it identical with these?

A. Yes, that is correct.

The Court: It is a pink carbon?

The Witness: Yes.

The Court: In the first part of your answer you said this is not. You refer to the clerk's identification ticket on top of that?

The Witness: Yes.

The Court: All right.

Q. (By Mr. Schwartz): Mr. Scofield, have you attempted or have you made a study of where certain species of fish come from as to whether they be within or without the 3-mile limit?

(Testimony of W. L. Scofield.)

A. Yes. Under my direction the fisherman selling fish is expected to record the block number, that is, the ocean is divided into 10 nautical mile squares, 10 minutes of latitude and 10 minutes of longitude, and the fisherman delivering fish is expected to record the block number to give the locality of his catch. Many, however, do not.

The Court: He is expected to record that on this ticket that you get?

The Witness: Yes, or give the information to the buyer who is making out the ticket.

Q. (By Mr. Schwartz): Is that where the space marked "place where fish [1233] caught" is?

A. Yes.

Q. And do some of them fill in that information?

A. Yes, many do. We do not press for all because fishermen are inclined to give a fictitious number and we would rather have no number at all than the wrong one.

Q. Do you feel that the information which you get and which you use for that purpose is reliable?

A. Yes, I would say it is quite reliable. Those who record the numbers usually give the right number. Fishermen are inclined to keep secret their favorite fishing spot and in that case decline to give the number.

Q. Now from the information and data which you do have available, do you have any statistics or have you arrived at any conclusions, concerning this 3-mile limit catch that I was asking you about, whether they come from without or within the 3-mile limit?

A. Yes, especially—

(Testimony of W. L. Scofield.)

Mr. Garrett: Wait a minute. I object to that question as assuming facts not in evidence. [1234]

* * *

The Court: Objection overruled.

Mr. Andersen: May we object to the species of fish, may it please the Court?

The Court: It isn't clear.

Mr. Schwartz: I am going to get to that, as far as the species is concerned.

The Court: Objection overruled.

The Witness: The answer would be yes, especially for certain important species. For example, the sardine catch has been plotted——

Mr. Andersen: May it please the Court, sardines are not the subject of this inquiry.

The Court: Yes, they are. The testimony of one witness was that he caught sardines; the testimony of one dealer was that he bought sardines and froze them and sold them to other fishermen for bait; and the testimony of one of the fishermen was that he caught sardines and sold sardines to the fresh fish market.

Mr. Andersen: That is for bait, but if the witness were to be asked questions regarding sardines you would learn that those are the sardines caught by an entirely different kind of boat than is manned by these defendants. They are caught by what are called the purse seiners.

The Court: I don't know. If you can tell in advance what the witness is going to testify to, I don't know. [1235]

(Testimony of W. L. Scofield.)

Mr. Andersen: Those fish here are not——

The Court: The objection is overruled.

Q. (By Mr. Schwartz): Go ahead, Mr. Scofield.

The Court: Go ahead what?

Mr. Schwartz: I didn't think he finished with his dissertation.

The Court: Your question was whether he had the statistical data and he said yes, he did, and he could tell from it whether it came from within or without the 3-mile limit. And you said you were going to develop the species.

Mr. Margolis: May we take the witness on voir dire, your Honor?

The Court: Yes.

Voir Dire Examination

By Mr. Margolis:

Q. You have testified the information is obtained from certain types of slips which are turned in.

The Clerk: These are in evidence.

By Mr. Margolis:

Q. Which the Clerk now tells me, as we thought was correct, are in evidence, and which are similar in type to Defendants' Exhibits E and F which have been shown you.

Are those records public records from the standpoint that they are available to anyone for inspection?

A. No. They are declared by law as confidential to the extent of not revealing the business of any in-

(Testimony of W. L. Scofield.)

dividual or firm. The law does provide that the summaries may be made public and we have in most cases published the results.

Q. With regard to the question of where a fish is caught with regard to a particular species, your department from time to time has made summaries of these slips where the information was available and those summaries have been published, is that right?

A. That is true for important species.

Q. Are those publications public documents?

A. Yes—well, I don't know just what a public document is, but they are available to the public.

Q. They are not confidential?

A. Not the summaries.

Q. Anybody can get one of the summaries from the Fish and Game? A. Yes.

Q. And any testimony that you would give would be based upon your knowledge of what is contained in those summaries, is that correct?

A. Yes. [1237]

Q. These documents are also official documents, are they not, of the Fish and Game Commission, which is a department of the Government of the State of California?

A. Yes.

* * *

(Testimony of W. L. Scofield.)

Direct Examination

(Resumed)

By Mr. Schwartz:

Q. What does the study—as long as we are talking about sardines, what does the study which your office made as to where these fish are located indicate——

Mr. Margolis: If your Honor please——

Q. ——with reference to the three-mile limit?

* * *

Mr. Margolis: I want to object to the question on the ground it is incompetent, irrelevant and immaterial, not the best evidence, referring to a matter of which this court can take judicial notice, and which the court should take judicial notice of.

The Court: Overruled.

* * *

A. I take it by “located” you mean where the fish are caught?

Q. (By Mr. Schwartz): Within or without the three-mile limit?

A. In the case of sardines in Southern California, as I recall, about a third are caught inside the three-mile limit; farther north it is about half and half.

The Court: What do you mean by Southern California? Where is your division line?

The Witness: Well, we ordinarily take about Point Concepcion. That is a natural division point.

(Testimony of W. L. Scofield.)

Q. (By Mr. Schwartz): Where is Point Concepcion with reference to Morro Bay?

A. Point Concepcion is south.

Q. South of Morro Bay? A. Yes.

Q. About how far?

A. Oh, I don't recall. Not far.

Q. Fifty or sixty miles, a couple of hundred miles?

A. Nearer sixty, I would say.

Q. What would you say your study shows as to the catch within or without the three-mile limit in the Southern California area of barracuda?

Mr. Margolis: If your Honor please, may we have a standing objection to this line of questioning on the ground stated?

The Court: Yes, the same objection as heretofore indicated will go to this line of questioning, and the same ruling.

Do you have some notes or data there?

(Witness handing a paper to the court.)

The Court: Do you want to see this? He has a little card. Go ahead.

A. To refresh my memory I looked over some of our records and notes on species in Southern California. I have recorded here that barracuda, approximately 75 per cent inside the three-mile limit.

Q. Halibut?

A. Well, that is practically all inside, since it is a bottom fish.

(Testimony of W. L. Scofield.)

Q. Mackerel?

A. Mackerel is practically all inside. Some is caught outside.

Q. Rock fish?

The Court: Rock fish?

Mr. Schwartz: Rock fish.

A. That is about——

The Court: What do you mean? What is a rock fish?

The Witness: The fishermen call them rock cod. It is not a cod. Our official name for them is rock fish. It is a group of fishes. That is about 50 per cent inside.

Q. (By Mr. Schwartz): Sea bass.

A. That is the white sea bass, it is mostly inside.

Q. Tuna.

A. Well, the locally-caught tuna is mostly outside the three-mile limit, and, of course, that from the south is all outside.

Q. White fish.

A. I couldn't say as to white fish.

The Court: What do you mean by the term "white fish,"—shark?

The Witness: No; it is a particular market fish.

The Court: Market fish.

The Witness: Yes.

Q. (By Mr. Schwartz): You say you can't say as to that? A. No.

Q. Yellow-tail?

A. Well, my note here is that practically 90 per cent is inside.

(Testimony of W. L. Scofield.)

Mr. Schwartz: Will you mark this, please?

The Clerk: 26.

(The document referred to was marked Government's Exhibit 26, for identification.)

* * *

Q. (By Mr. Schwartz): Mr. Scofield, sometime last year you were requested to furnish certain information to the Department of Justice in regard to the fresh fish market?

A. I believe so.

Q. Do you recall when that was? A. No.

Q. Pursuant to that request, did your office, or did you or your office, furnish to the Department of Justice such a report on the fresh market fish landed in various regions of the Southern California district?

* * *

Q. (By Mr. Schwartz): I show you what has been marked as Government's Exhibit 26 for identification, containing three sheets, and ask you whether that is the information which you furnished this office, or the Department of Justice.

A. Yes.

Q. Now what is the source of the information which appears on Exhibit 26 for identification? What records or data were used?

A. This report is based on the so-called pink tickets or fish receipts.

Q. How are those pink tickets or fish receipts kept at your office, that is, physically?

(Testimony of W. L. Scofield.)

A. Well, they are filed but first the information is punched on cards so that summaries may be made, the system used by the Federal Bureau of Census.

Q. Would you say that the number of those files would be quite considerable, the number of those cards bearing that information?

A. Well, our storeroom for them is about the size of this room.

Mr. Schwartz: We offer in evidence Government's Exhibit No. 26.

Mr. Garrett: May I ask the witness same questions on the foundation, your Honor?

The Court: Yes.

Let me see the document.

(The document referred to was passed to the Court.)

Voir Dire Examination

By Mr. Garrett:

Q. Mr. Scofield, is the matter contained in that document that you have before you, which is marked Government's Exhibit 26 for identification, is that matter a result of an independent calculation of these cards or is it taken from summaries for 1945 already prepared at the time the report was made?

A. I think practically all, if not all, is summary from reports already run.

Q. I notice the name of some person appears at the head of that document. I don't recall the name.

The Court: G. Connor.

(Testimony of W. L. Scofield.)

Q. (By Mr. Garrett): G. Connor. Who is he, Mr. Scofield?

A. Miss Connor does the summarizing of the information by the punch card system.

Q. Did you receive this request for information from the Department of Justice yourself, the request which Mr. Schwartz referred to?

A. I am not quite sure. As I recall, some representative from the Department of Justice called at my office, we discussed the matter, and I then went with him to see Miss Connor and it was discussed there. That is my recollection. I am not quite sure.

Q. Discussed the matter with you?

A. I think so.

Q. Do you remember at that time what period it was requested that you figure?

A. No, I do not.

Q. Can you explain why these figures that are before us here come for the year 1945 instead of some other period? Was that at anybody's request? [1245]

A. No, the 1946 figures are not complete even yet. Some of the scattered dealers, especially in the northern part of the state, are slow in getting their tickets in. There are in some cases corrections and additions that have to be made, and the summarizing of the 1946 figures are not yet completed.

Q. What is true in that respect in connection with the 1945 figures?

(Testimony of W. L. Scofield.)

A. Well, they are completed. Occasionally there are some additions that come in later, but the 1945 tables are substantially completed.

Q. What tables and information for what year are the last which you have published?

A. 1945.

Q. That is already published, is it?

A. Yes—not in as much detail—I better explain it this way. We issue a special bulletin that gives rather complete data on values, number of fishing boats, number of fishermen, and so forth. As I recall, that bulletin has not been issued for 1945. But the tables of catch have been issued in another circular.

Q. And it is those tables of catch which are the basis for this summary which is No. 26, the document that is before you, is that correct?

A. Would you repeat that question? I don't quite understand it.

Mr. Garrett: Read it, Mr. Reporter.

(The question referred to was read by the reporter, as follows:

(“Q. And it is those tables of catch which are the basis for this summary which is No. 26, the document that is before you, is that correct?”) [1247]

The Witness: Well, I would say that it was the reports and tables in our statistical building that are the basis for this report. Whether or not those tables have been published for '45—I believe they have not all been published.

(Testimony of W. L. Scofield.)

Q. But they are contained in summaries whether published or unpublished which exist at the present time in your office? A. Yes.

Q. The differentiation there that you make in this document between fresh fish and other fish, upon what basis is that made? What species are contained in the tabulation of fresh fish catch?

A. Well, it is easier to explain it that only certain species are canned in this state: the five tunas, sardines, mackerel, and small amounts of other species.

Q. And so they are not included in the fresh fish figures in your compilation?

A. Only those that—only the poundage that is sold in the fresh fish market. The great bulk is sold to the canneries. The separation is rather easily made by deducting from the grand total the amount sold to canneries. Then what is left is the fresh fish market sale. That, however, is tabulated by the summaries for the different dealers in the different ports.

Q. As a matter of fact, a considerable quantity of [1248] yellow-tail is sold to canneries, is it not?

A. Yes; and canned.

The Court: As I understand, you deduct that, though, to ascertain the amount of fresh fish yellow-tail that is sold?

The Witness: Yes.

Q. (By Mr. Garrett): Is there anything in this document, 26 for identification, which is not contained in the summaries at your office?

A. I think not.

(Testimony of W. L. Scofield.)

Q. Are there any of the statistics there in 26 which are not being ascertained by an examination of the summaries in your office?

A. I think there is nothing there but what we could show to a qualified person in our office.

Q. I take it that summaries in so far as they have not been published are not available to the public?

A. Yes, that's true.

Q. You regard them as your private records, is that right?

A. No. We are obeying—it is provided in the law that those are confidential records in the hands of the Fish and Game Commission until summaries are made available.

Q. Perhaps you didn't understand my question.

A. I didn't. [1249]

Q. I am not referring to the original slips, I am referring to these summaries which first exist, I presume, in typewritten form in your office, and then later on are published. Now, of course if they are in their published form they are not confidential information. My point is do you regard the summaries in their unpublished form in your office as covered by the confidential information provisions under which you operate, as distinguished from the original cards or slips?

A. No; I think with some possible exceptions any tables that we would have that are summaries and do not reveal the business of an individual, we would show them to any qualified person.

(Testimony of W. L. Scofield.)

Q. There is nothing on this 26 for identification that reveals the business of any individual, is there?

A. I think not, no.

Q. Nor is there anything on the summaries from which 26 for identification was prepared, as far as you can say, is there?

A. I think not.

Q. And there is no reason why those summaries themselves could not have been brought into court in so far as any legal disability you consider yourself under is concerned, is that right?

The Court: What summaries are you talking about, counsel? [1250]

Mr. Garrett: I am talking about the summaries——

The Court: From which he made this?

Mr. Garrett: Which are taken from the original records and which were used in producing this document according to the testimony of the witness.

Mr. Schwartz: He didn't testify to that. He says this was made from summaries and the records themselves.

Mr. Garrett: I think we have had further information on that, your Honor.

Q. (By Mr. Garrett): Didn't you testify, Mr. Scofield, that all of the information contained in 26, for identification, was available from the summaries?

Mr. Schwartz: Yes, but since that was made up. That is what he talked about.

Mr. Garrett: It is a question of foundation, your Honor.

(Testimony of W. L. Scofield.)

The Court: Do you understand the question?

The Witness: No. Possibly I could give a word of explanation.

The Court: Go ahead.

The Witness: The information on the tickets is transferred to a punch card, then the cards are run and tabulated by machines and printed; printed reports showing the pounds of each species caught at each port, another report shows price, another report shows the amounts handled by each dealer, and so forth. Then to prepare any such table as this exhibit 26, [1251] those so-called punch-card reports would be referred to. In this case I think it would be a little summarizing to get the figures in this form.

Q. (By Mr. Garrett): The punch-card reports are in themselves a summary of the figures either on catch or value for a certain period of certain fish in a certain area, is that correct?

A. Yes. Some of those reports are in great detail that we would not show to anyone outside. Some are sufficiently summarized in themselves from the original records that we would have no objection in showing.

Q. What are the facts in that respect with the punch-card reports upon which this compilation is based?

A. As I said, some are in such detail that they show the business of each individual fishing boat. Others are summaries. For instance, the catch in pounds for each species in each locality, that is

(Testimony of W. L. Scofield.)

already summarized and we would have no hesitancy in showing those.

Q. So that all of the information to authenticate this document No. 26 is in your office in the form of reports which are not so detailed that they cannot be made available?

A. I think that is true, yes. [1252]

Q. And the bulk of those reports for 1945, they could be included in very small volumes, could they not?

A. No, not such small volume because value is recorded there, and those summaries to show value are derived from rather bulky reports on sale prices. Then averages are struck for the sale price and multiplied by the number of pounds of that species in that locality to get that value. That is the value in money paid the fishermen on the average. So those reports are rather bulky.

Q. As to values then your figures are based at least in part upon estimations, are they?

A. I wouldn't call it estimation.

Q. Approximations?

A. It is an averaging in cases where that is necessary. If the price is always given then it is just a case of carrying out the calculation, the number of pounds at the stated price. However, we do strike an average to fill in the gaps where price is not recorded.

Mr. Garrett: No further questions.

Objected to, your Honor please, as not the best evidence and hearsay.

(Testimony of W. L. Scofield.)

The Court: Objection overruled. The document is admitted.

(The document referred to was received in evidence and marked Government's Exhibit No. 26.) [1253]

The Court: Mr. Scofield, on each one of these pages it says "fresh fish market," and for instance Santa Barbara region 1945, "estimated pounds in value 4,543,000 pounds, value \$551,500." Then it is itemized by ports in that region but down here is a parenthetical statement: "1945 totals include canneries species, 5,468,000 pounds. \$705,000," which is greater than this figure up here.

I do not understand that. If the smaller figure includes the greater, how could it—well, I do not see how the smaller figure could include the greater one.

* * *

The Witness: I think the intention here is that the grand total which is meant by 1945 totals are made up of this fresh fish as reported and the amount sold the canneries.

The Court: I see. And that would be true on the next page also here in the San Pedro area, for instance, where there the estimated pounds and value is 9 million but down here it is 531 million pounds?

The Witness: Yes. I think that is the explanation, your Honor.

The Court: Then let me see if I understand it now. In other words, the total fish going into the

(Testimony of W. L. Scofield.)

Santa Barbara market or Santa Barbara region is the estimated pounds which is fresh fish at the top here, plus the estimated pounds going [1254] to the canneries which is in the parentheses?

The Witness: I think that is correct.

* * *

Direct Examination

(Continued)

By Mr. Schwartz:

Q. What figures are used to get up the value column on these three pages? Is that the price paid to the fishermen by the buyer of the fish?

A. I think I have already explained that where price is recorded the extension is made to show the total amount paid for so many pounds. Where price is omitted an average price for that month or part of the month is made to give a value to those pounds from which the price was omitted.

The Court: In other words, if you had 5 million pounds for one month and you had the actual price paid for 4 million pounds, you would average that 4 million pounds price and apply that to the additional 1 million?

The Witness: Yes. Actually we are not particularly interested in values. We are interested in the price per pound as an index to changing economic conditions, but our interest is in the pounds of fish taken from the ocean rather than the values.

(Testimony of W. L. Scofield.)

The Court: Pounds of fish per unit used to get it? [1255]

The Witness: Yes.

The Court: What is your unit, man or boat?

The Witness: That varies from a knowledge of the fishery and the method of operating. In general, it might be called the daily boat catch.

The Court: Daily boat catch?

The Witness: Yes. The catch for a boat for a day. In some cases we use a trip. It depends on the fishery. The conditions vary.

The Court: You mean it depends on the type of fish?

The Witness: And the method of operating.

The Court: I see.

Mr. Schwartz: Your Honor please, at this time I should like to read to the jury certain portions from Exhibit No. 26, if I may.

* * *

Mr. Margolis: Your Honor please, it should be read in its entirety.

* * *

The Court: If you are going to read it you might as well read it all. [1256]

* * *

Bureau of Marine Fisheries—Statistics

* * *

Q. (By Mr. Schwartz): Mr. Scofield, how long have you been with the Bureau of Marine Fisheries, Division of Fish and Game, of the State of California? A. About 28 years.

Mr. Schwartz: That is all.

(Testimony of W. L. Scofield.)

Cross-Examination

By Mr. Margolis:

Q. Mr. Scofield, directing your attention to Government's Exhibit 26, which is the summary that you presented here today, are the figures there both with regard to pounds and dollars estimates, or are they accurate figures? [1260]

A. Well, that depends on what is meant by accuracy. You could not have complete accuracy in any such volume of records as that. I would not call it an estimate. It is based primarily on exact figures.

Q. Well, you refer in the exhibit to estimated pounds and value. Would you say that is a mistake?

A. Well, it is a meaning of terms. Ordinarily in popular language when we say an estimate, it is based on some figures but has a large degree of guesswork. I would say there was a very, very small degree of guesswork in these figures.

Q. Will you tell us what degree of guesswork there is in these figures?

A. That, I think, would be impossible. There are questions of interpretation of figures as we see them on a carbon copy: two people compiling, running up a column, one would call it a 6 and one would call it an 8; so you haven't complete accuracy, if you want to quibble on that point.

Q. That isn't the question of an estimate, is it; that is a question of simply correctly reading figures?

(Testimony of W. L. Scofield.)

A. There is an element of estimate in the value as already explained in my testimony.

Q. Isn't there, also, an element of estimate in the pounds?

A. Well, I would have to think about that. I believe [1261] not. I think that figure is the actual recording of pounds as shown on the tickets. I don't see where any estimating would come in there.

Q. Let's take, for example, the species barracuda—are all fish tags for barracuda caught in the areas as shown by Exhibit 26 included in the fresh market compilation?

A. You mean all the barracuda caught as recorded in the fresh fish markets?

Q. That is the practice, isn't it?

A. Yes, sir, it is the common practice; but there might occasionally have been some few pounds sold to a cannery. I couldn't say as to that.

Q. But all of it, whether some is sold to the cannery or not, all of it is included in the fresh market compilation, isn't it?

A. Well, if sales were actually made at a cannery, they would be excluded from this table. This table represents the sales made to the fresh fish markets.

Q. Are sales sometimes made to others than the canneries and the fish actually goes to the canneries for canning?

A. Yes, and that is usually recorded in our record as a resale ticket.

(Testimony of W. L. Scofield.)

Q. And the resale would be from whom to whom?

A. Well, for example, a mackerel landed at Santa Monica [1262] is trucked to the cannery, when the fish is unloaded at Santa Monica, the original ticket is made out, then when the cannery receives a truckload of mackerel from Santa Monica another ticket marked resale cannery ticket is made out.

Q. If a boatload of mackerel is brought in to Santa Monica and sold to a dealer there——

A. Yes.

Q. ——how is that listed in the report Exhibit 26?

A. The deduction of cannery fish trucked from Santa Monica would be subtracted from the market landing at Santa Monica. Otherwise there would be a considerable error in the market record for Santa Monica. [1263]

Q. Are you sure that those deductions have been made with reference to the figures on Government's Exhibit 26?

A. Well, that is our intention. A load or two may have been overlooked but we don't know that.

Q. Let's see if I can gather the method of computing these figures. All of the tickets from a particular dealer or, let's say, from all of the dealers in a particular area, as shown on Government's Exhibit 26, are gathered together and then the pound information and the dollar information

(Testimony of W. L. Scofield.)

where it is available on those tickets is added up, is that right?

A. Possibly I better explain the procedure. The tickets come in——

Q. Am I wrong in what I say?

A. Slightly.

Q. All right. Go ahead.

A. As the tickets come in from a dealer for the month, those are transferred to punch cards and then the punch card reports are run. Now a convenient way is to run the dealer reports first because the cards are grouped in that order.

Then they are later re-sorted and other reports run, for instance, the pounds of each species, and so forth.

Q. So that the original breakdown, as far as the dealers are concerned, is not by species but simply by pounds and dollar value for fish, is that right? [1264]

The Court: I do not understand what you mean by "breakdown." He said everything is put on the card and then they make a breakdown of what they want.

Mr. Margolis: I think the question was ambiguous, your Honor, and I will rephrase it.

Q. When you originally tabulate the amount and dollar value of the fish sold to the dealer, that tabulation is made without regard to species but is one single tabulation for all species, is that correct?

A. No, that is not.

Q. All right.

(Testimony of W. L. Scofield.)

A. It would have to be by species.

Q. Then you have originally a breakdown by species, is that right? A. Yes.

Q. Then for each species of fish you have a separate breakdown for each area as shown in Government's Exhibit 26 for each year, is that right?

A. Yes.

Q. And what you get then of total pounds as shown by these tickets and the dollars is where the tickets show it, is that right?

A. Well, it depends. If I understand you correctly. It is not made in just the way you indicate.

Q. Suppose you tell me how it is made then.

A. There are some six or seven, what we call, routine reports run from those cards after they are punched and verified.

Q. By "those cards" you refer——

A. To the punch cards.

Q. ——to the cards or the information which is obtained from the slips obtained from the fresh market dealers, is that right? A. Yes.

Q. Are those the cards you refer to?

A. Yes.

Q. Go ahead with your answer.

A. One of those routine reports shows the pounds of each species and the prices paid and from that we calculate the values, from that report. Now there will be some poundage there missing with no price, and that is where we do our averaging of price and carry out that extension.

Now information about a dealer or the amount of

(Testimony of W. L. Scofield.)

fish landed at any one dealer would be taken from another report, the dealer's report, which shows the pounds of each species handled by him during the month and the day.

The Court: Then do you make it up by boat too?

The Witness: Yes. There are two routine reports run showing the activity of the deliveries of each fishing boat in the state. That is the report in which we are most interested. [1266] One shows it in detail, the pounds of each species delivered each day. Another report summarizes that for the month.

The Court: By the way, how many fishing boats are there?

The Witness: There a little short of 4000. There are about 3,700, I would say.

The Court: How many fish canneries are there in the state?

The Witness: There are about a hundred.

The Court: How many fresh fish dealers in the state, do you know?

The Witness: No, I couldn't say.

The Court: Could you give an approximation?

The Witness: That would include a lot of these little scattered fly-by-night dealers and it would run into several hundred.

Q. (By Mr. Margolis): There are several hundred, as a matter of fact, here in Los Angeles alone, isn't that right?

The Court: Fresh fish dealers?

Mr. Margolis: Yes.

(Testimony of W. L. Scofield.)

The Court: You mean people who buy from the fishermen?

The Witness: Yes, that is the point. [1267]

Q. (By Mr. Margolis): Who buy directly from the fishermen?

The Court: Who buy directly from the fishermen.

The Witness: Yes.

Q. (By Mr. Margolis): How many are there?

A. You see, if fish goes into the fresh fish trade up here and is handled by several brokers, that is not our concern. We wouldn't count those in our list of dealers.

The Court: Your dealers are the ones who deal immediately and directly with the fishermen?

The Witness: Yes.

The Court: Beyond that you keep no statistical record or are not interested?

The Witness: No.

Q. (By Mr. Margolis): Do you know how many such dealers there are in the Los Angeles area? A. You mean brokers?

Q. No, dealers who buy part of the fish which they sell from fishermen who fish in the Southern California area.

A. I have had no occasion to check that recently. It would be just a wild guess. There are many people here who know better than I do.

Q. You have no basis for making an estimate?

A. No.

(Testimony of W. L. Scofield.)

Q. Now you said there were about 3700, approximately 3700, boats. Was that in California?

A. Yes.

Q. How many of those boats are located in Southern California as you have defined that area?

A. That is difficult because there is a great deal of migration back and forth. Oh, very roughly, I would say half the boats of the state are in the south.

Q. Of those how many are engaged in cannery fishing and how many in fresh market fishing?

A. I would say a larger number are engaged in the fresh market fishing.

Q. A larger number of boats?

A. Larger.

Q. In fresh market fishing than cannery fishing?

A. Yes, I would say so. For instance, when we had practically all of the purse seiners of the state here at San Pedro I believe that Newport had more boats than San Pedro.

The Court: What do you mean, the purse seiners were fishing for the canneries?

The Witness: Yes.

The Court: And the other people, the fresh fishermen are the smaller boats?

The Witness: The small boats at Newport I believe had [1269] more boats than any other port in the state.

Q. (By Mr. Margolis): There are a larger number of boats engaged in fresh market fishing. How about the number of fishermen?

A. Most of those small boats are one-man boats,

(Testimony of W. L. Scofield.)

and the larger boats carry a crew of 12 to 14, 16 men. However, the great number of small boats up and down the coast I would think that more fishermen are engaged in the small operation.

The Court: You mean the fresh fish?

The Witness: Yes.

Q. (By Mr. Margolis): Looking at the second page of this report——

The Court: Pardon me. You say there is a migration. That is to say, if they hear the sardines are running then the sardine fishermen up at Monterey go up to Monterey?

The Witness: Yes.

The Court: Or off of Mexico?

The Witness: In tabulating the boats we give a table in a more extended publication showing the boats that are centered in one port, but there are a considerable number of boats that fish a few months in one port, go to another part of the state through part of the season.

The Court: Fresh fish boats?

The Witness: Yes, they move up and down. That is particularly true of those fishing sharks in the past two years [1270] for the livers, and the trolling boats down here fish albacore and go north for the salmon season. There is quite a good deal of movement back and forth.

Q. (By Mr. Margolis): Before going on with the line of questioning I was pursuing, I want to get one thing quite clear. I am not sure I understand you.

(Testimony of W. L. Scofield.)

Referring again to Government's Exhibit 26, taking the first page, that is, the Santa Barbara region for 1945, the estimated pounds and value are respectively 4,543,000 pounds and \$551,500.

Down there at the bottom you have 1945 totals, including cannery species, 5,468,000 pounds and \$705,800.

Now the question I want to ask you is this: Were there 5,468,000 pounds of cannery fish caught in the Santa Barbara region in addition to the 4,543,000 pounds of fresh market fish, or in order to obtain the number of pounds and value of cannery fish, is it necessary to deduct the 4 million figure from the 5 million figure and the \$500,000 figure from the \$700,000 figure?

A. Well, I will confess that this note bothers me. However, the note has nothing to do with the question of what was landed at the fresh fish markets. It refers to cannery species and might better have been omitted from this page. [1271]

Q. Well, however it wasn't omitted, and I would like to find out what it means.

A. Well, the best way to do would be to check with one of our other publications to show what the total poundage was for this year in this area. Then there wouldn't be any question. [1272]

* * *

Q. (By Mr. Margolis): Would you be able to find out what that figure at the bottom means, whether that means that there were 5,000,000 pounds—I am just using the round figures—5,000,000

(Testimony of W. L. Scofield.)

pounds of cannery fish caught in Santa Barbara, or something less than 1,000,000 pounds caught?

A. It would be very easy to check that with our publication, and the figures speak for themselves.

Q. You could check that by telephone call, perhaps, so that you can give us that information?

* * *

The Witness: Yes, it might be that I could find it up in our Los Angeles office. I hope they have that publication.

* * *

The Court: By the way, do they have any canneries there—what are those towns listed on page 1?

Mr. Margolis: Santa Barbara, Morro—I will clear that up.

Q. (By Mr. Margolis): There are no canneries in the Santa Barbara region, are there?

A. No.

Q. What happens is there is some cannery fish caught there, sold there, delivered there, and then it is transported to [1274] the canneries in other areas by truck or other modes of transportation, isn't that true?

A. Yes, there is some from the Santa Barbara area.

Q. And it is true—what I have said is true, that it is transported by truck or some other means, it is landed in Santa Barbara or Morro or one of these other ports listed under Santa Barbara, and then transported by truck or some other way?

(Testimony of W. L. Scofield.)

A. There are deliveries from various points along the coast, trucked to a cannery.

Q. All right. I will have to come back and find out a little more about this.

Incidentally, you understood, did you not, Mr. Scofield, that what I want to find out relates not only to the first page of the exhibit, but to that figure where it is used on all three pages of the exhibit?

A. Yes.

Q. Are sardines a fresh market fish?

A. Do you mean by that none sold in the fresh fish market?

Q. Well, are there any, or what is the situation with regard to sardines?

A. There are small quantities sold on the fresh fish market.

Q. And very large quantities sold to the canneries, is [1275] that right?

A. A small fraction of one per cent of the sardine catch is sold in the fresh fish market.

Q. As a matter of fact, from the standpoint of pounds, sardines constitute a greater bulk than all the rest of the fish combined in Southern California, isn't that true?

A. Yes.

Q. Considerably greater?

A. Yes.

The Court: Southern California, or all up and down here?

The Witness: The State as a whole, the sardine catch as a whole is double the catch of all other species of fish put together.

Q. (By Mr. Margolis): And that would be

(Testimony of W. L. Scofield.)

true for Southern California and it would be true for Northern California, is that right?

A. No, it is less true of Southern California, because there is a higher percentage of other species landed here.

Q. But in Southern California it is still true that the number of pounds of sardines landed is greater than all other species combined, is that correct? A. Yes.

Q. And a very small fraction of one per cent of those sardines is sold to the fresh market dealers, isn't that so? [1276]

A. Well, several years ago I calculated that, and at that time it was a fraction of one per cent sold fresh.

Q. You don't remember how small a fraction?

A. No.

Q. The fish, the sardines which are sold to the fresh market, are sold for bait purposes, isn't that correct?

A. No. I was taking that strictly in the sense of consumed fresh. No, there is a considerable poundage sold for bait.

Q. There is a considerable——

The Court: To the fresh fish markets?

The Witness: Handled by the fresh fish markets that resell the sardines to fishermen for bait.

The Court: The less than one per cent is just consumed?

The Witness: That is to the actual markets that are selling to consumers, yes. But in the bait ques-

(Testimony of W. L. Scofield.)

tion, I would say that will bring the figure up considerably. It may be up to two per cent, I don't know.

Q. That is just a guess, is that right?

A. Yes, that is a guess.

Q. Are the sardines which are delivered to fresh fish dealers delivered to them by the large purse seines or by small boats?

A. Usually by small boats.

Q. Isn't it a fact that the small boats which deliver [1277] the sardines to the fish dealers do not have the large nets, and that they do their fishing close in, isn't that right?

A. Yes.

Q. So that as far as the fresh market portion of sardines is concerned, you have no evidence or knowledge that any portion of that is caught outside of the three-mile limit, isn't that so?

A. No, I think examination of the records would show that even the small boats make catches—some few catches outside the three-mile limit.

Q. Of sardines?

A. Yes.

Q. Incidentally, you have talked about—what did you call them, zones, or blocks?

A. Block numbers.

Q. Yes, block numbers. What is the shape of one of these block areas—withdraw that. A block number is intended to indicate a particular area of water, isn't it?

A. Yes.

Q. Are they all the same shape or are they different shapes?

A. Well, they are somewhat different shapes

(Testimony of W. L. Scofield.)

where the land deducts from the original block. That is, it is a water area.

Q. It is a water area. How far out does that water [1278] area extend for each block?

A. Well, there are 10 minutes of latitude and 10 minutes of longitude. That means they are 10 nautical miles long north and south, and somewhat less than 10 nautical miles wide east and west.

Q. So if all you know about where a boat caught its fish is that it caught it within a particular block area——

A. Yes.

Q. ——you don't know whether it caught it within or without the three-mile limit, isn't that right?

A. Not quite right. Many of those blocks lie entirely within the three-mile limit. Some of them do. And——

Q. There are no blocks that lie entirely outside the three-mile limit, are there?

A. Yes.

Q. Are there blocks which lie entirely outside the three-mile limit?

A. Yes.

Q. I see.

The Court: How far out do you block your ocean for your statistical purposes?

The Witness: Out further than fishing boats ordinarily go.

The Court: In Southern California you block them out beyond the Channel Islands? [1279]

The Witness: Thirty or forty miles offshore. However, the blocks are larger out there, because

(Testimony of W. L. Scofield.)

there is very seldom a catch reported very far offshore. Twenty-five miles is usually the limit.

Q. In computing the amount of fish which is caught inside, as compared with outside the three-mile limit, how do you consider the fish which is reported as being caught in those blocks part of which is within the three-mile limit and part of which is outside the three-mile limit?

A. In the species in which we are most interested, that is obtained by questioning the fisherman as to how many miles he was offshore when he made his catch. Now, that wouldn't apply to all species. But the mackerel, sardines, and tuna, when the catch is sampled the person taking the samples of fish from the boat makes a point of interviewing the boat's captain to determine how far he was offshore, or in what part of the block he made his catch.

Q. How often is that done?

A. For instance, the sardine sampling is done now twice a week, and that means that some 10 or 15 captains are interviewed during the week as to where their catches were made.

Q. Are those captains who are interviewed captains of the canneries, or captains of the fresh fish wharves?

A. Mostly at the canneries.

The Court: Do sardines run in schools? [1280]

The Witness: Yes.

The Court: And do they follow a pattern up and down the coast?

(Testimony of W. L. Scofield.)

The Witness: Yes, there is a very distinct migration up and down the coast.

Q. (By Mr. Margolis): So the information that you have about where sardines are caught is primarily, if not exclusively, information concerning where the cannery fishermen catch their sardines? A. That's right. [1281]

Q. By the way, what percentage of the fishermen give information as to the blocks in which the ticket load of fish is caught?

A. That varies in the different parts of the state. Here in Southern California I think more than half of the fishermen give good locality reports.

Q. They trust each other more here than they do up North?

A. No, less so. The further north there are a good many fishermen of Scandinavian descent who take such records more seriously than in Southern California.

Q. Now these slips are filled out in the first instance by whom, by the fishermen or by the marketers? A. By the buyer.

Q. And the buyer obtains the information, or is supposed to obtain the information, from the fishermen with regard to where he caught his fish?

A. Yes.

Q. Do you know whether or not it is a fact that fish buyers very often simply fill in the information themselves without asking the fishermen, just speculating?

A. Yes. We have found cases of that sort. I

(Testimony of W. L. Scofield.)

think occasionally you will find a buyer who makes that a common practice.

Q. Of course in making your computations, you have no [1282] way of separating the slips from which the buyer filled in his information from what the fishermen told him and those in which he just simply filled in something which came out of his own head?

A. That is not correct. We do have a way of checking.

Q. What is the way?

A. That has already been explained, that in interviewing boat captains we find out where he actually did make the catch and we then can tell the market man who has deliberately guessed at a figure.

The Court: Is there an offense under the Fish Market Law for making false statements?

The Witness: Yes, that is a violation of the law. It is a falsifying of state records.

However, we don't believe in pressing prosecutions because we gain more through friendly co-operation than we do by a big stick. So after locality of catch and price and some of those questions we do not prosecute ordinarily, unless it is a flagrant violation.

Q. (By Mr. Margolis): As to the fishermen who don't give any information and for whom no information is filled in on the slip, you don't know where they catch their fish, is that right?

(Testimony of W. L. Scofield.)

A. Well, we have pretty good information from two or three sources. [1283]

Q. What are they?

A. Where the other captains tell us the fleet fished that night or that group of boats delivering at that port, and from reports and records of our own patrol vessels who are out in the fishing area at various hours during the day and night, we have a way of checking roughly. But of course it must be admitted that those figures of catch locality are much less exact than the record of pounds landed.

Q. And the figures on catch locality that you have do not distinguish between fresh market fish and cannery fish, do they? Aren't they based on species rather than who they are sold to?

A. Yes.

Q. So that let us say for example—let's take tuna as an example—some tuna is sold to the fresh market?

A. Yes.

Q. And some tuna is sold—by far the greater quantity of tuna is sold—to the canneries?

A. Yes.

Q. Some tuna is caught within the three-mile limit and some is caught outside the three-mile limit? Is that correct?

A. Yes.

Q. You have no records which show whether the fish caught within the three-mile limit—I will withdraw that. [1284]

You have no record which shows whether the fishermen who sell to the fresh market have caught

(Testimony of W. L. Scofield.)

tuna within the three-mile limit or outside the three-mile limit, do you?

A. Yes, we have a record. I think it hasn't been followed out. The catch locality record is shown on the ticket, which of course shows the name of the boat. Now we know to whom the boat delivered that night because it is shown on the ticket also.

Q. But from the figures you have given us, the only figures you have given, it is impossible to tell, is that right? A. Yes, I think so.

Q. And the same thing is true with regard to all species of fish which are sold in part to fresh market and in part to the canneries?

A. Well, it depends on what you mean by that. Of course some species are not sold to the cannery at all, some you would be practically certain they went to the fresh fish market.

Q. But my question didn't refer to those. I said that the same thing was true with regard to those species of fish which are sold in part to the dealers, fresh fish dealers, and in part to the canneries.

A. Yes.

Q. Now I wonder if we could—— [1285]

The Court: What do you mean, the same thing is true? That Exhibit 26 does not show it?

Mr. Margolis: That there is no information which actually shows which of the fish, how much the fish sold to the fresh market dealers came from inside or outside the three-mile limit, and the figure is an overall figure which includes both fresh market fish and cannery fish.

(Testimony of W. L. Scofield.)

The Court: In Exhibit 26?

Mr. Margolis: No, that isn't in Exhibit 26, your Honor. On that item, your Honor please, the witness testified as to the locality where the fish is caught. Exhibit 26 pertains to poundage and dollars total.

The Court: Yes, I know, but it is total poundage and it doesn't indicate whether it is inside or outside the three-mile limit.

Mr. Margolis: I am talking about the figures which the witness gave us, and he gave us by oral testimony some percentages of fish caught inside the three-mile limit and fish caught outside. It was to that that I had reference.

Q. You so understood me, did you not?

A. Yes.

Q. I wonder if you would go down the list of species of fish which are caught in Southern California and tell us which of those species are exclusively cannery species and which are exclusively fresh market species and which are sold [1286] to both the cannery and the fresh market.

A. Well, exclusive is a comprehensive term. There are some few fish sold of all the cannery species to the fresh fish markets, so there are none that are exclusively cannery.

Q. There are some cannery fish in which practically none is sold to the fresh fish market, though?

A. Very small amount.

Q. I wonder if you would so indicate in giving your answers in regard to the various species.

(Testimony of W. L. Scofield.)

A. Well, the cannery species are the sardine, mackerel and the five tunas, yellow fin, blue fin, albacore, skipjack and bonita.

Q. If I may interrupt you for just a second. With regard to those species which you have called cannery fish, will you go over each one and state whether any substantial amount is sold to the fresh market, those that you have just given us?

The Court: Do you want the percentage?

Mr. Margolis: The approximate percentage.

The Court: His last previous answer said all of them sold in some of the fresh fish markets.

Q. (By Mr. Margolis): If you can give us the approximate percentage.

A. We have covered the question of sardines pretty thoroughly. [1287]

Q. Yes.

A. A considerably larger percentage of the mackerel is sold fresh. It is also——

Q. Can you give us any kind of an estimate on that?

A. I haven't checked that. It would be easy to obtain that, I think, from the records.

Q. All right.

A. I think the same would be true of the tunas. I couldn't say offhand what percentage.

Q. When you say the same, you mean the same as of the mackerel?

A. As of the mackerel, yes.

Q. All right. Of all five tunas?

A. Yes.

(Testimony of W. L. Scofield.)

Q. Is there a considerable amount of albacore sold to the fresh fish markets?

A. Yes, quite an appreciable percentage. [1288]

* * *

W. L. SCOFIELD

called as a witness by and on behalf of the government, having been previously sworn, resumed the stand and testified further as follows:

Cross-Examination

(Resumed)

By Mr. Margolis:

Q. Have you had an opportunity to obtain the figures or information I requested with regard to Government's Exhibit 26?

A. Yes. In the lunch hour I phoned the laboratory, and Miss Connor was out, but a girl in charge there during her absence said that that note in thesis was the total fish received.

The Court: That is——

The Witness: The note in parentheses——

The Court: Included the fresh fish?

The Witness: Yes.

The Court: So that in Santa Barbara it would be 4,000,000 fresh fish and 1,000,000 for the canneries?

The Witness: Yes.

Q. (By Mr. Margolis): Looking at Government's Exhibit 26, if we want to get the total amount by pounds and by dollars of fresh market fish in the Southern California area, we would have

(Testimony of W. L. Scofield.)

to add these figures on the top of each of these three sheets together, is that correct?

A. For all of Southern California?

Q. Yes. A. Yes.

Q. So that we would have to take from Santa Barbara 4,543,000, is that right? A. Yes.

Q. And in dollars \$551,500. Then from the Los Angeles area 9,378,000 pounds, is that correct?

A. Yes.

Q. And in dollars, \$1,850,000? A. Yes.

Q. Then for San Diego region, 6,026,000 pounds, is that correct? A. Yes.

Q. And in dollars from that area, \$801,600, is that [1291] right? A. Yes.

Q. I get 19,947,000 pounds. Somebody can check my addition if they like; I won't vouch for it. But in any event if my addition is correct, that is the number of pounds—I have added the figures I have indicated—that is the number of pounds of fresh market fish from Southern California, is that right? If I have added this correctly, that would give me the total number of pounds? A. Yes.

Q. If I added the dollars correctly, it is \$3,-203,100. If we want to get the total, including fresh market fish, we would have to add together the figures down at the bottom of the page in parentheses, is that right? A. Yes.

Mr. Schwartz: Total of what?

Q. (By Mr. Margolis): Total of fresh market and cannery fish, all fish caught, is that right?

A. Yes.

(Testimony of W. L. Scofield.)

Q. This would include everything, there would be no exceptions? A. Yes.

Q. From Santa Barbara that would be 5,468,000 pounds, the Santa Barbara area? A. Yes.

Q. And in dollars, \$705,800? A. Yes.

Q. From San Pedro it would be 531,210,000 pounds? A. Yes.

Q. And in dollars, \$15,114,000, is that right?

A. Yes.

Q. And from the San Diego area 105,902,000 pounds? A. Yes.

Q. And \$11,250,000? A. Yes.

Q. I get 642,580,000 pounds. Again, if my addition is correct, that is the total number of pounds of fish caught in all the Southern California area, regardless of whether it is sold to canneries or fresh fish dealers?

A. Yes, I think there are no areas omitted from this.

Q. So that the total in dollars would be \$27,069,800, if my addition is correct?

A. Yes. [1293]

Q. Now if we wanted to find out how many pounds of fish were sold to the canneries, and how much in dollars that represents, we can subtract the first set of figures that I took up from the second and that would give us the cannery, is that right? A. I would think so.

Q. All right. Let's try that and see what happens. (Making calculation.)

So we get there, again if my computation is

(Testimony of W. L. Scofield.)

correct—I think it has been checked now—19,947,000 pounds of fresh market fish as against 622,633,000 pounds of cannery fish, is that right?

A. I believe so.

Q. And translating that into dollars—(making calculation)—and again I think those figures are correct, we find that the value of the fish sold to the canneries is \$23,866,700 as compared with \$3,203,100 sold to the fresh fish dealers.

As I understand the testimony, there are more boats, probably more men, fishing fresh fish than there are fishing cannery fish, is that right?

A. Yes.

The Court: While we are on those figures, is that the way you arrived at those figures there, by taking the total and deducting the fresh fish or taking the total and deducting [1294] the cannery fish?

The Witness: No. I think when this table was prepared they took the canneries and added up the amount of fish.

The Court: For the canneries?

The Witness: For the canneries. Then they took the various fresh fish markets and added up that fish, and the two then should equal the grand total. I think it was an actual compilation from dealers.

The Court: From the records?

The Witness: Yes.

The Court: Then if I understand you correctly, it wasn't just a subtraction from the total?

(Testimony of W. L. Scofield.)

The Witness: No, but it ought to be approximately the same.

The Court: For verification?

The Witness: Yes.

Q. (By Mr. Margolis): This certainly gives us the general picture, even if it isn't entirely accurate to the last dollar, is that right? A. Yes.

Q. Now I notice one thing that I think requires some explanation. The poundage of fish sold to the canneries is more than 30 times as great as the poundage of fish sold to the fresh market dealers.

Mr. Schwartz: If the Court please, I object to the question, or the statement of Mr. Margolis—I am not sure which it is——

Mr. Margolis: I haven't finished.

The Court: Right now I suppose it is argument, but let us let him finish his question and then we will rule on the objection.

Mr. Margolis: Maybe my multiplication is wrong, but I think it is right.

The Court: Roughly there is 20 million pounds of fresh fish and 450 million pounds of cannery fish.

Mr. Margolis: I said over 30 times the amount in pounds sold to the canneries.

The Court: Three times 20 would be 60. That is about right.

Q. (By Mr. Margolis): And about somewhere between 8 and 9 times the amount in dollars. How do you explain the fact that the amount in dollars is so much less per pound for cannery fish than it is for fresh fish?

(Testimony of W. L. Scofield.)

A. Well, the price of different species varies widely and the price within a season varies from month to month. Some of the cannery fish is very cheap. Sardines, for example.

Q. Sardines actually——

The Court: Let him finish his answer. [1296]

Mr. Margolis: I am sorry.

The Witness: The price of mackerel is considerably higher, somewhat higher. The price of tuna is very much higher.

The Court: Than mackerel?

The Witness: Yes. And certainly much higher than sardines.

Then the same is true of fresh fish. Rock fish, which looms rather large in parts of the season, sells at a very low price. Swordfish and some of the others sell at a higher price.

Q. (By Mr. Margolis): The basic reason for the discrepancy—I don't mean discrepancy in the sense that the figures are wrong, but for the difference in price per pound—is that so large a volume of the fish sold to the canneries are sardines, is that right? A. Yes.

Q. And the sardines sell at a very, very low price? A. Yes.

Q. Sardines are caught by these purse seines? They run in large schools, don't they?

A. Yes.

Q. And they are just large quantities of them that are caught at one time in these great big purse seine nets? [1297] A. Yes.

(Testimony of W. L. Scofield.)

Q. So that the catching of sardines as compared with the catching of large quantities of other fish are relatively easy and the price is low?

A. Yes.

The Court: While you are on that subject, the fish sold and caught for the fresh fish market commands a higher price per pound to the fisherman than the fish to the canneries?

The Witness: No, there is such wide variation. Some of the cannery fish, like the tunas, is pretty good priced. Sardines are very cheap.

The same is true of fresh fish. The rock fish sell at a low price and some of the other species do also.

The Court: As low as sardines?

The Witness: I have seen them at times when the sardine price hardly paid the fisherman to bring them in. Of course during the wartimes the price of all fish was up. I have seen rock cod sell at 1½ cents a pound, which hardly paid the fisherman to bring them in.

The Court: Is that recently? Is that in the last five years?

The Witness: Before the war.

The Court: Within the last five years?

The Witness: No, they wouldn't be that low in the last five years. [1298]

The Court: Within the last 10 years?

The Witness: Yes, within the last 10 years. Some of the market fish sell at a good price. So there is a wide variation in both the cannery and in the fresh fish.

(Testimony of W. L. Scofield.)

Q. (By Mr. Margolis): However, talking about this wide variation, it is true, is it not, that for each species of fish sold to the cannery the price for that species has been pretty well stabilized over the past seven or eight or nine years, is that not so?

A. Yes, that is true.

* * *

Q. You have seen from an examination of the tickets, have you not, that the price paid by the canneries to fishermen bringing in fish to them is the same price from day to day and week to week and month to month in the same year for the same species of fish, isn't that so?

Mr. Schwartz: Now, if the Court please, I object to the question on the ground it is incompetent, irrelevant and immaterial to the issues in this case. The indictment charges [1299] a conspiracy involving a violation of the Sherman Act in regard to the commerce of fresh fish and not cannery fish. I think the examination of this witness to the extent that it has gone along has been somewhat out of line, but I haven't seen fit to object because I didn't think it particularly mattered one way or the other. But I think at this point we ought to call a halt to it. What the canneries pay fishermen for cannery fish, whether it be sardines or tuna or any other fish, has nothing to do with the charges brought by the Government in this suit. [1300]

* * *

Mr. Schwartz: I object on the further ground that whatever price the canneries pay to fishermen

(Testimony of W. L. Scofield.)

for fish has nothing to do with the issues in this case. [1301]

The Court: That is the ground you stated before.

No, I don't think it has, counsel. The objection is sustained.

Mr. Margolis: Will I get an opportunity to state our position on that?

The Court: Pardon me?

Mr. Margolis: Will I get an opportunity to state our position on that?

The Court: I think you have stated it. I think that is one of the first things you stated in connection with this case. Do you remember you spent some time telling me the things of which I should take judicial notice?

Mr. Margolis: But I didn't talk about cannery fish at that time.

The Court: The objection is sustained.

Mr. Margolis: We have reasons that have not been presented, your Honor. I would like an opportunity to present them.

The Court: No, the objection is sustained.

Mr. Margolis: I would like to make an offer of proof as to what the answer would be.

The Court: I think that is immaterial. Whatever his answer is, it is immaterial.

Mr. Margolis: For the sake of the record I think we have a right to make an offer of proof, even though your Honor rules it is immaterial, then the offer can be rejected. [1302]

(Testimony of W. L. Scofield.)

The Court: You can reserve it until recess time and make it out of the presence of the jury.

Q. (By Mr. Margolis): As to fresh market fish, is it not a fact that there is for the same species of fish, and during the same month in any year, a great range of prices paid. A. Yes.

Q. For example——

The Court: At the same port?

The Witness: Yes.

Q. (By Mr. Margolis): And by the same dealer, is that right? A. Yes.

Q. For example, during one month fish like barracuda could run from low price of three cents per pound to maybe a high price of 13 or 14 cents per pound, is that right?

A. Yes, I believe barracuda has a wider range than most species.

Q. Well, take halibut, ranges run some times from 5 cents to 14 or 15 cents, isn't that right?

A. I feel that I am not qualified to answer specific questions as to the price of different species, because I have not been interested in price. I do know there is considerable range in fresh fish prices from week to week.

Q. So that when you estimate the price of the fresh [1303] fish with regard to those tickets for which no price is given, then you use an average which covers a wide range of prices generally, isn't that right. A. Yes.

Q. But when you don't get the information on the cannery fish, then there really is no estimate necessary because the price is the same all the time?

(Testimony of W. L. Scofield.)

Mr. Schwartz: I object to the question on the ground it includes a statement not in issue. There has been no evidence that the cost or value of cannery fish is taken into account when evaluating the cost of fresh fish.

Mr. Margolis: They put in the exhibit, and the exhibit is based in part upon an estimate, as this witness testified.

Mr. Schwartz: I object to that statement on the ground that it is not so.

Mr. Margolis: The exhibit has that information on it.

Mr. Schwartz: But not Mr. Margolis' testimony.

The Court: I don't think that the portion of the exhibit is material that relates to that cannery fish down there. It is on the exhibit, they offered it——

Mr. Margolis: They offered it, and certainly——

The Court: Just a minute. But I don't think in connection with the issues as framed by the indictment here and the pleas of the defendants of not guilty to it that the price or quantity of cannery fish is in issue or material. [1304]

Mr. Margolis: I just want to say this, your Honor: the evidence went in without objection, and I should be allowed to cross-examine on that point. It seems to me if they put in the exhibit we ought to be allowed to cross-examine on that exhibit.

The Court: That's right. The objection will be overruled.

Mr. Margolis: Will you read the question, please.

(The question was read as follows:

(Testimony of W. L. Scofield.):

“Q. But when you don’t get the information on the cannery fish, then there really is no estimate necessary because the price is the same all the time?”

The Witness: Yes, qualified: there is some variation in cannery fish. Your statement was very flat that it was the same all the time.

Q. (By Mr. Margolis): It is a very, very slight variation?

A. It is quite stable, yes.

The Court: Is it slight or is it stable?

The Witness: There is some variation as the result of labor disputes, or whatever, there are some changes in cannery prices. His statement was that it remained the same absolutely. There is a little change in cannery prices.

Q. (By Mr. Margolis): From year to year, is that right?

A. Yes. Sometimes within a season. [1305]

Q. There might be one change within a season, is that right?

A. One, or possibly more. But is quite stable compared with fresh fish prices, yes.

Q. You don’t have a situation where it changes from day to day?

A. No.

Q. It is also true, is it not, that from year to year there is a great variation in the availability for harvest of particular species of fish?

Mr. Schwartz: I object unless the type of fish is stated. I don’t mean type; I mean fresh fish or cannery.

(Testimony of W. L. Scofield.)

Mr. Margolis: I assume when a barracuda is going to be caught it doesn't know whether it is going to be sold to the fresh market or the cannery.

Mr. Schwartz: I assume the fisherman who goes out for it knows.

The Court: The testimony is that the fresh fish market is different than the cannery. Objection sustained.

Q. (By Mr. Margolis): There is some tuna which is sold to the fresh fish market, is that right?

A. Yes.

Q. So availability of tuna for harvest by the fisherman varies greatly from year to year, doesn't it?

A. Yes.

Q. And the cause for that variation is something which is pretty much an unknown factor, isn't it?

A. Yes.

Q. And that is true of all other species of fish, is it not?

Mr. Schwartz: Again I rise to make the same objection, unless we know if we are talking about fresh fish or canned fish. There is a difference, and I submit that the question——

The Court: The objection is overruled. I think everybody can take judicial notice of the fact that fish don't run the same every year. I am no commercial fisherman or professional fisherman, and I know that.

Mr. Schwartz: I am willing to stipulate that.

Mr. Margolis: We will accept the stipulation, and I will withdraw the question.

(Testimony of W. L. Scofield.)

The Court: They don't run the same every year or every month, or the same time of the year.

Mr. Margolis: I have here a document headed, State of California, Department of Natural Resources, Division of Fish and Game, Circular No. 20, Statistical Report on Fresh and Canned Fishery Products Year 1945, Sardine Canning and Reduction Plants Report, which I will ask be marked for identification, your Honor.

The Court: G?

The Clerk: G is right. [1307]

The Court: It may be marked.

(The document referred to was marked Defendants' Exhibit G, for identification.)

The Court: Is this a public document?

Mr. Margolis: It is my understanding that it is, your Honor. I will ask the witness.

The Court: Let me see it.

(The document was handed to the court.)

Q. (By Mr. Margolis): This document which I just described, and which I show you, sir, is a publication as indicated of the Bureau of Marine Fisheries? A. Yes.

Q. That is the bureau with which you are connected or employer? A. Yes.

Q. On page 3—pages 1 and 2 are missing—

Mr. Margolis: Do you have a complete copy there, counsel?

(Testimony of W. L. Scofield.)

Mr. Schwartz: Apparently this is page 1 at the top.

Mr. Margolis: I see. Then, pages 1 and 2 aren't missing. Apparently page 1 is the cover page and page 2 is the inside of the cover page.

Q. (By Mr. Margolis): Then on page 3 there is a chart headed, California Fresh Fishery Products For the Year 1945. Now, that chart purports to show, does it not, in terms of pounds the fish caught and sold during the year 1945 in the [1308] various areas of California?

A. Yes.

Q. And it is broken down by species?

A. Yes.

Q. I notice that there is one subtitle "Total Fish in Pounds," then below that—or above that there are a number of species of fish, starting with albacore, anchovy, barracuda, et cetera., then below that there is "crustacean," which consists of three types: crab, lobster (spiny), and shrimp. Below that there is "mollusk," which consists of abalone, clam, et cetera. First of all I want to ask you whether the figures on Government's Exhibit 26 is total fish in pounds including crustaceans and mollusks, or is just the total fish excluding crustaceans and mollusks?

A. I think when this table for 26 was prepared that mollusks and crustaceans were omitted. That is my general recollection. This publication is a preliminary publication to show the results of the previous canning season for the season 45-46.

(Testimony of W. L. Scofield.)

Q. The same period that is covered by Government's Exhibit 26?

A. No, the primary object of this publication——

Q. Excuse me. I don't mean the object, I mean the period, the period of time is the same.

The Court: I think he is trying to answer that the object would require a different period. Go ahead.

The Witness: I am putting in information that was not directly asked here.

The Court: Then the objection is sustained.

Mr. Margolis: I am certainly going to give you an opportunity to explain in full, but if you will answer my questions one at a time I think we will get along better.

Q. First of all, I want to know whether the period of time covered by this table in the chart which is a part of the pamphlet marked Defendants' Exhibit G and the period of time covered by Government's Exhibit 26 are the same.

A. Yes. The chart on page 3 is the calendar year 1945, as is Exhibit 26.

Q. Now there are a number of areas shown on page 3 of Exhibit G, one of which is Santa Barbara, and I ask you now this, whether the area Santa Barbara as used on Defendants' Exhibit G is the same area as the area Santa Barbara referred to on Government's Exhibit 26 .

A. I think it is.

Q. Do you know of any differences?

A. No.

(Testimony of W. L. Scofield.)

Q. It is the same?

A. I assume from this table that all of Santa Barbara region was included.

Q. And all of Santa Barbara region would be included in Exhibit G.

A. It is there, yes; quite definitely.

Q. Now you were going to explain, and I want you to explain now, what differences, if any, there are with regard to the place from which the statistics were gathered for Defendants' Exhibit G and Government's Exhibit 26.

A. There is a difference because this publication coming out usually around March is a preliminary report to show the cannery pack in meal, in cases and in oil, and this preliminary table of fish catch for the year is printed at that time.

For the dribbling along through the rest of the year are supplemental reports that come in from some of the scattered dealers, so that later tables are a somewhat higher figure. The percentage of error in this preliminary table—the percentage of omissions I should say rather than error—is small. There are supplemental figures that come in and then this table is printed.

Q. How high would the difference of percentage be, 5 per cent, 10 per cent?

A. I wouldn't expect it to exceed 5 per cent. There may be cases where there would be a larger amount reported than got into our preliminary table.

(Testimony of W. L. Scofield.)

Q. But you wouldn't expect it to be over 5 per cent?

A. Not ordinarily.

Q. I notice that the total amount of fish shown on Exhibit G for Santa Barbara for the year 1945 is 3,384,426 pounds, whereas on Government's Exhibit 26 it is 4,543,000 pounds, or a difference of more than 20 per cent. How do you account for that?

A. Well, in this table on page 3 the total, including crustaceans and mollusks, is very close to this original figure.

Q. Well, then, does—I thought I understood you to say——

A. I was under the impression that this table probably did not include the mollusks and crustaceans. This table does not naturally. What this total was taken from, I can't be sure.

Q. Let us see if we can get this straight.

A. However this comment here in parenthesis has no bearing on this.

Q. You keep saying "this" and "this," and for the record and the jury it is not at all clear what you are referring to. I want you to go back and make it clear.

Suppose you give me your answer again and when you say "this" point to which table you are pointing to, identify it, so that your answer will be understood.

The Court: Identify it by exhibit number instead of "this" and "this" and "these" and "those."

(Testimony of W. L. Scofield.)

The Witness: The table for Exhibit 26 was prepared to show the fish delivered to the fresh fish markets.

Q. (By Mr. Margolis): Well, crustaceans and mollusks are delivered to fresh fish markets, aren't they?

A. Yes, they are. Now whether that table includes mollusks and crustaceans I am not sure now.

Q. You don't know?

A. No.

The Court: Do the canneries buy mollusks and crustaceans?

The Witness: No, not ordinarily.

The Court: To can?

The Witness: I will take that back. They do at Monterey.

The Court: Do they in Southern California?

The Witness: I think not. There might be exceptional cases. They can squid at Monterey, which is a mollusk.

The Court: But they do not can other crustaceans, do they?

The Witness: No. [1313]

Q. (By Mr. Margolis): The table on Defendants' Exhibit G continues on page 4 and 5.

A. Yes.

Q. Only giving areas that are not given on page 3, is that correct.

A. Yes.

Q. I notice on page 4 of Defendants' Exhibit G—that is the published pamphlet—there is a refer-

(Testimony of W. L. Scofield.)

ence to Los Angeles region, whereas page 2 of Government's Exhibit 26 refers to a San Pedro region. Can you explain the difference in terminology?

A. No, the two terms we use rather interchangeably. San Pedro is the harbor of Los Angeles, that is all.

Q. Well, as a matter of fact, though, the region is generally referred to as the Los Angeles region because it includes harbors in the Los Angeles area other than San Pedro, isn't that a fact?

A. Well, our region covers a wider area than just that harbor. In our informal conversation we refer to it as the San Pedro region because San Pedro is the harbor. But in more formal published reports it is called the Los Angeles region.

Q. The Los Angeles region is the more accurate term, is it not? [1314]

A. It is the more formal term.

* * *

Q. (By Mr. Margolis): Now I notice that the total on Exhibit G for the Los Angeles region, including crustaceans and mollusks, is 421,951,884 pounds, whereas on Government's Exhibit 26 the total is 531,210,000 pounds, or about 110,000,000 more pounds on Exhibit 26. Can you account for that?

A. Yes, that is something of which we are somewhat ashamed. The original table, the first table that came out, did not include a considerable quantity of albacore that was not reported to us. Those

(Testimony of W. L. Scofield.)

tickets were allowed to accumulate on buyer barges anchored off the coast. Our patrol was somewhat negligent in checking over that state of affairs and [1315] those tickets came in later and were included in our final tables.

Q. 110 million pounds of fish caught on those barges?

A. Yes. It amounted to this, that our preliminary figures on albacore were only—oh, somewhere in the neighborhood of two-thirds of what was actually caught. Those records came in later and we added it to our final tables.

Q. You say your preliminary figures were about two-thirds of the actual amount caught?

A. In albacore, I believe, or at least for a period of the year. I don't know as it would be true for the whole year.

Q. Let's look at the San Diego region then. The San Diego region on Exhibit G is the same region as is referred to on the third page of Government's Exhibit 26, the San Diego region, is it not?

A. Yes.

Q. Did you have the same kind of an error in San Diego?

A. That is where most of the difficulty arose. The principal buyer barges were anchored off San Diego and the failure to turn in the records partially accounts for the low figure in the preliminary table.

The Court: That is the printed table?

The Witness: Yes.

(Testimony of W. L. Scofield.)

The Court: Exhibit G? [1316]

The Witness: Yes.

Also there was considerable transferring of fish from one dealer to another and from one region to another which had to be corrected later by what we call resale tickets.

Q (By Mr Margolis): The total shown on Exhibit G for San Diego is 11,674,000-odd pounds, is that right? A. Yes.

A. Yes.

Q. Whereas on Government's Exhibit 26 it is 105,902,000 pounds, a difference of over 90 million pounds.

The Court: That is for San Diego?

Mr. Margolis: That is what these exhibits show, your Honor.

The Witness: Apparently so.

Q. (By Mr. Margolis): Let's see if I get this straight. The total albacore shown for San Diego is 2,272,369 pounds. Do I understand you to mean that that figure should be somewhere close to 100 million pounds of albacore in San Diego?

A. I mentioned albacore because there was the greatest discrepancy in that species in our records, the late records coming in. Undoubtedly the same trouble applied to some of the other species.

Q. What other species?

A. Some of the tunas. Starting in 1945—Incidentally, [1317] there was a good deal of trucking from one region to another—we didn't exercise the

(Testimony of W. L. Scofield.)

close field check during that year that we would normally, due to a shortage of personnel, so that much of that had to be straightened out afterwards in the making out of the resale tickets.

A. Mr. Scofield, I am afraid I don't quite understand this yet. The total tuna and albacore shown for San Diego on Exhibit G is less than 5 million pounds, is it not, taking all species of tuna together?

A. I hadn't computed that.

Q. Suppose you just take it approximately. We don't want to bother getting the exact figure, but it is considerably less than 5 million, isn't it?

A. Of all five tunas?

Q. Of all five tunas for San Diego.

A. Well, maybe.

Mr. Schwartz: If the Court please, I think we can shorten this proceeding if Mr. Margolis would direct the witness's attention to the note at the bottom of page 5.

Q. (By Mr. Margolis): Is there anything in the note that helps you?

The Court: What does the note say?

Mr. Margolis: There are a lot of items in the note.

Mr. Schwartz: "The record does not include (1) albacore shipped from Oregon and Washington, (2) fish imported from [1318] South America or (3) from the Gulf of California."

Q. (By Mr. Margolis): Does Government's Exhibit 26 include fish shipped from Oregon and Washington and from other places?

(Testimony of W. L. Scofield.)

The Court: Do you mean the cannery fish or the fresh fish?

The Witness: Fresh fish.

Q. (By Mr. Margolis): Do you mean to say that Exhibit 26 includes albacore shipped to the Los Angeles region from Oregon and Washington and from South America?

Mr. Schwartz: Or from the Gulf of California, that is, Mexico.

The Court: Is albacore fresh fish?

Mr. Margolis: I thought so.

The Court: Limiting it to albacore now, he testified most albacore goes to the canneries and the other places. Does that first figure on Exhibit 26 indicate fish shipped in from those states?

The Witness: There is no indication on this table as to whether or not any shipments in are included.

Q. (By Mr. Margolis): As a matter of fact, you stated this was just fish caught.

The Court: Yes, that is what the witness stated.

Q. (By Mr. Margolis): Isn't that so?

A. That would be the ordinary interpretation of fish caught locally, but the table may include some stuff shipped in. I am sure I can't remember now.

Q. So this table may include fish shipped in from Oregon and Washington?

A. I wouldn't think so, but I can't be sure. That table was made up some months ago and I

(Testimony of W. L. Scofield.)

don't recall now. The table should state whether any imports are included or not, but it doesn't.

The Court: Does the cannery total there include fish brought in or is there any fish brought in to be canned here?

The Witness: The cannery totals would show a good deal brought in.

The Court: From South America?

The Witness: Yes, from south of the Mexican line.

Q. (By Mr. Margolis): So that as far as you know, this Exhibit 26 which was introduced by the Government to show fish caught here may include fish shipped in, is that right?

A. It might. I would have to check those figures.

The Court: How much fish was shipped in? It doesn't show in that Exhibit G, does it?

The Witness: G is that printed table? [1320]

The Court: Yes. Do you have G there?

(The document referred to was passed to the witness.)

The Witness: The note says that this printed table does not include albacore from Washington and Oregon or fish imported from South America or from the Gulf of California.

The Court: That is albacore only, is that right?

The Witness: No. 1, it does not include albacore shipped in from Washington and Oregon or fish imported from South America or from the

(Testimony of W. L. Scofield.)

Gulf of California. Apparently from the wording of that it includes the **regular landings from the** west coast of Mexico.

The Court: In other words, the fish brought in here caught by people who leave here?

The Witness: There is a further note: "Shipments received at California canneries from north of the state boundary were as follows," and then it gives those figures. So they were not included in the table. That footnote merely adds those that came from Washington and Oregon. So that table does not include those coming in from Washington and Oregon.

The Court: Does Exhibit 26?

The Witness: Well, I would think not, but, as I say, I can't recall now.

The Court: Do you have that in your records?

The Witness: Yes. [1321]

The Court: Don't you take it from the fish tickets?

The Witness: Yes, we could check it from there.

The Court: Do you get fish tickets from Washington and Oregon and Mexico and South America?

The Witness: No.

The Court: I thought you said these records were made up from the fish tickets.

The Witness: They are, but an importer bringing in fish by truck, for instance from Oregon, makes a ticket there, a resale ticket. That truck-load is not a delivery.

The Court: That is a resale ticket?

(Testimony of W. L. Scofield.)

The Witness: Yes. It is not the delivery of a fishing boat.

The Court: I understood you to state that this did not include resales, that resales were deducted on this when you made up your general table and statistics.

The Witness: Well, where the resale would lead to a duplication it is deducted, but where it is not included in a regular boat ticket why it is included because it is fish processed here in this state. It was landed here by truck rather than by fishing boat. We call it a resale ticket because it is not a boat delivery.

The Court: Let me ask you now: On Exhibit 26, does that or does that not include fresh fish brought to any of the markets indicated by means other than by boat? [1322]

The Witness: Well, that is the difficulty. I couldn't remember whether any other fish was included than boat deliveries.

The Court: Do you recall now?

The Witness: No, I don't. The table should state just what it does include. My first impression was that it did not include anything from outside, but it may. I can't testify as to that now.

The Court: Do you have any way of telling how much from outside?

The Witness: We would have to check our records to see whether or not those figures are included.

The Court: Would it be the difference between

(Testimony of W. L. Scofield.)

3 million, that counsel asked you about a while ago concerning the Santa Barbara area, and 4 million pounds?

The Witness: I think not. I think it would be no such figure as that.

Mr. Margolis: I have no further questions.

The Court: Mr. Garrett?

Mr. Garrett: No questions.

Mr. Schwartz: I just have a couple of questions on redirect.

Redirect Examination

By Mr. Schwartz:

Q. You were asked about the State price of fish, and discussed that. I will ask you whether the price of fish has any relation to the supply and demand as it may exist at any given date?

Mr. Margolis: I object to it on the ground that there is no foundation laid to qualify this man as an expert on that subject.

Mr. Schwartz: If the court please, it was a matter that Mr. Margolis went into on cross.

The Court: Overruled. That is the price of fresh fish or canned fish?

Mr. Schwartz: Fresh fish.

Q. Does the price of fresh fish have any relation to the law of supply and demand as it may be on any given day or date as indicated by those tickets which you have?

A. Well, that is a difficult subject. As indicated by the tickets?

(Testimony of W. L. Scofield.)

Q. We are talking about the price of fish that you know about as you get on those fish tickets. Is the price of [1324] any species of fish determined as of that date by the law of supply and demand? If there is a long supply does it differ from the time when the supply is short, if you can answer that question?

A. Yes, but taking the variable barracuda as an example, I have known of cases where the price was high at the beginning of the day, a large load brought in and the price dropped within a few hours.

Q. Does the table in G, for identification, where it talks about fish that comes in from the Gulf of California, would that include the fish as brought in by those clippers that go out of the Port of San Diego or any of the Los Angeles ports?

A. No. The boat deliveries would go in on our regular table. That refers to fish trucked in, principally Mexican sea bass or totauwa.

Mr. Schwartz: That is all, your Honor.

Mr. Margolis: Your Honor, there has been an entirely new subject opened and it is going to be a long time now. I will be 20 minutes or maybe a half hour on this subject, so we might take our recess.

The Court: A new subject? I didn't know there was. If there would have been I wouldn't have permitted it.

Mr. Margolis: It was about his opinion as to the effect upon prices of the law of supply and

(Testimony of W. L. Scofield.)

demand. I have a [1325] lot of questions on that subject.

The Court: Yes, I know, you raised the question in your cross-examination.

Mr. Margolis: I didn't think I raised the relationship between the law of supply and demand.

The Court: You raised what caused the variation in the price of fish, and he had a right to examine him on redirect. If your cross examination goes to that, counsel, it is not admissible. If it goes only to that, I will sustain any objection.

Mr. Margolis: I am going to direct myself to the specific question which this witness was asked, and to that particular item. Certainly I have a right to cross examine him on that question.

Mr. Schwartz: I will object to it, your Honor, on the ground it was matter brought out on cross examination.

The Court: The question permitted on redirect to which you objected, the objection was overruled because he touched a new subject which you had brought out on cross. When you had the witness on cross you exhausted your subject matter on that.

Mr. Margolis: May I put my question?

The Court: We can't go back and forth between the attorneys on the same subject matter.

Mr. Margolis: May I put my question for the record, [1326] then, your Honor?

The Court: Yes, put your question for the record.

(Testimony of W. L. Scofield.)

Recross Examination

Q. (By Mr. Margolis): When you testified in response to a question put by government counsel that the price of fish does have a relationship to the law of supply and demand, were you referring to a day-by-day period, a week-by-week period, a month-by-month period, a year-by-year period, or any other period?

Mr. Schwartz: I object to the question on the ground that it is improper recross examination, because it was matter brought out on cross examination and gone into on redirect.

The Court: No, I don't think that question was. He is referring to a specific answer and asking him on that question. Objection overruled.

You remember the question?

The Witness: Yes.

The Court: Counsel, obviously his answer was self-contained, and the question is not appropriate for the answer that he gave. He said: I know of a day when barracuda came in and before the end of the day the price went up.

He wasn't referring to year-by-year. I will sustain an objection on my own motion on the ground it is complex and compound. [1327]

Q. (By Mr. Margolis): Were you limiting your answer to variations in price on a day-to-day basis?

Mr. Schwartz: I submit that the answer that he gave, if the court please,—I object to the question on the same ground.

(Testimony of W. L. Scofield.)

Mr. Margolis: One more thing, your Honor. I would like to have one minute, if I may, on the subject matter of the last examination out of the presence of the jury. I don't want to argue it before the jury. I just want to make this point.

I think that your Honor had reference in your ruling or your indication on the matter that you would rule on the line of questions, to some questions that I ask on cross examination with relation to variation in prices.

The Court: That is right.

Mr. Margolis: I would like to direct your Honor's attention to the fact that the variation in prices or lack of variation in prices went directly to the issue of the exhibit in evidence. It doesn't have anything to do with the law of supply [1330] and demand. As a matter of fact, the only basis on which I was able to show that there was no variation with regard to the canneries was in connection with that exhibit.

Now we have had a question which, as a matter of fact, this witness is qualified as an economic expert upon the relationship between supply and demand upon prices. The mere fact that prices change is one thing, the fact that there is a relationship between supply and demand upon prices is another thing. One is a matter of fact, to which anybody can testify who has the knowledge, the other is a matter of expert testimony.

The Court: You examined him upon the matter. You asked him about his opinion, if it wasn't true

(Testimony of W. L. Scofield.)

that cannery prices remained the same and that other prices varied.

Mr. Margolis: I asked him about a fact, your Honor.

The Court: You asked him about a fact, I know, but like our other expert, Dr. Robinson, he wasn't giving his opinion, he was giving facts.

Mr. Margolis: But, your Honor please, I was asking him what the tickets showed. I wasn't asking him whether there was any relationship between this and an economic fact. Anybody who has seen those tickets could have testified as to the fact. Anyone who could read English and had seen those tickets could. It takes an expert, it takes an economist, to testify about the effect of the law of supply and demand [1331] and I think the field has been opened up. That is why I object on the grounds that there was no foundation because I thought that was a question which required an expert to answer.

Now apparently he has been offered here as an expert. He testifies about the law of supply and demand, and an economist has a right to testify about that, but a man who is not familiar with the field I submit is not qualified.

Mr. Schwartz: Your Honor, this man is not here as an expert economist, he is here as a biologist.

The Court: If that is the case, the last answer he gave to your question should be stricken, because you asked him his opinion as to the law of supply and demand.

(Testimony of W. L. Scofield.)

Mr. Schwartz: I must submit that he is not here as an economist. I think he gave his title as a biologist, and he said, as a matter of fact, he was not familiar with prices and didn't care about prices.

The Court: We will strike his answer.

Mr. Margolis: One thing that has happened in this case, again and again, has been that the government has offered testimony, exhibits, and then tried to back away from what they——

* * *

LYNN EVANISEVICH

called as a witness by and on behalf of the government having been first duly sworn, was examined and testified as follows:

The Clerk: May I have your name?

The Witness: Lynn Evanisevich.

The Clerk: Your address?

The Witness: 734 Fourteenth Street, San Pedro.

Direct Examination

By Mr. Rubin:

Q. How is your name pronounced?

A. Evanisevich.

Q. Miss Evanisevich, by whom are you employed?

A. By Local 33.

Q. Will you keep your voice up, please?

(Testimony of Lynn Evanisevich.)

A. Local 33, International Fishermen.

Q. Where are they located?

A. Berth 73, San Pedro.

Q. For how long have you been so employed?

A. About six years.

Q. Do you know Mr. Gilbert Zafran, one of the defendants in this case? A. Yes.

Q. Do you know by whom he is employed?

A. Yes.

Q. By whom is he employed?

A. Local 36.

Q. And is Local 36 and Local 33 located at the same office in Berth 73? A. Yes.

Q. Do you perform any duties for Mr. Zafran at Local 36? [1341] A. At Local 33.

Q. At the place of the office where Local 33 and 36 are located, do you perform any duties there for Mr. Zafran? A. Yes, I do.

Q. What are those duties?

A. Typing, mostly.

Q. Typing, mostly? A. Yes.

Q. Anything else? A. Phone work.

Q. You handle his office matters there, do you, in connection with typing and answering the phone, and so forth? A. Yes.

Q. What kind of documents are given to you, Miss Evanisevich, by Mr. Zafran for typing. Does he dictate to you or does he give you the handwritten documents?

A. Mostly handwritten.

(Testimony of Lynn Evanisevich.)

Q. And when he gives you those handwritten documents, what do you do with them?

A. Type them.

Q. And then what happens to the handwritten document?

A. We throw them in the basket.

Q. What happens to the typewritten documents—are they filed in the files of Mr. Zafran?

A. They are given to Mr. Zafran. [1342]

Q. And they are filed in the files of Local 36, are they? A. I imagine, yes.

The Court: Do you keep the files of Local 36?

The Witness: We don't do much filing for Local 36.

Q. (By Mr. Rubin): They don't have a very large establishment there, do they? A. No.

Q. I see. All right. Do you type letters for Mr. Zafran or copy letters for him? A. Yes.

Q. When meetings are held do you copy the minutes of the meetings that are submitted to you by Mr. Zafran? A. Yes.

Q. I see. And were you so engaged during the year 1946, Miss Evanisevich? A. Yes.

Q. Who else does the same kind of work that you do there?

Mr. Garrett: That is assuming facts not in evidence.

Q. (By Mr. Rubin): If anyone? Do you have any assistant or associate who does the same kind of work that you do there?

A. Just another girl in the office.

(Testimony of Lynn Evanisevich.)

Q. What is her name?

A. Stella Narducci. [1343]

Q. Stella Narducci? A. Yes.

Q. N-a-r-d-u-c-c-i? Is that correct?

A. Yes.

Q. I show you what has been marked as Government's Exhibit 236, for identification, and ask you if you have ever seen that document before.

A. Yes, it has my initial on it.

Q. Will you keep your voice up, please?

A. Yes.

Q. It has your initial on it? A. Yes.

Q. Was this the document that you copied for Mr. Zafran? A. I don't remember.

Q. What dictation symbols are opposite your initial? A. GZ.

Q. That is followed by what? A. "le."

Q. Using that to refresh your recollection, can you tell us who gave you that document to copy?

A. It would appear to be GZ.

Q. And is it customary for you to put—

The Court: Who is GZ?

The Witness: Gilbert Zafran.

Q. (By Mr. Rubin): Is it customary for you to put the [1344] initials GZ or the initials of the person who dictates the document to you before your own initials? A. Most always.

Q. You have seen Mr. Zafran's signature many times, have you not? A. Yes.

Q. I call your attention to the signature appearing on Government's Exhibit 236, for identi-

(Testimony of Lynn Evanisevich.)

fication, and ask you if that is Mr. Zafran's signature.

A. It looks like it. I wouldn't say definitely.

Q. It looks like Mr. Zafran's signature, is that correct? A. Yes.

Q. Is there anyone else there who signs Mr. Zafran's name to any documents in your office?

A. At times, I believe.

Q. Who?

Mr. Andersen: May we see that letter, Mr. Rubin? We don't have a copy of that.

Mr. Rubin: You have a copy of all of these, counsel.

Mr. Andersen: Not of that one. This is one of about four we don't have copies of.

The Court: Read the question to the witness.

(The record was read.)

The Court: You may answer the question.

The Witness: Stella or myself, mimeograph work.

The Court: Did you sign that? Is that your writing?

The Witness: No.

The Court: Mimeograph work?

The Witness: Mostly mimeograph work.

The Court: Did you sign this letter?

The Witness: No.

The Court: Did Stella?

The Witness: It doesn't look like her handwriting.

Q. (By Mr. Rubin): Miss Evanisevich, was

(Testimony of Lynn Evanisevich.)

this document exhibited to your prior to your taking the stand this afternoon?

Mr. Margolis: We don't question the identification of that document, your Honor. It is in evidence already.

Mr. Rubin: If counsel will please bear with me, I would like to present this in my fashion.

The Court: The objection is overruled.

A. Yes.

Q. (By Mr. Rubin): And when did you examine this document?

The Court: You mean last before she got on the stand?

Mr. Rubin: Before she got on the stand, yes.

A. In your office.

Q. (By Mr. Rubin): About what time?

A. Just before lunch.

Q. I see. And did you place upon this document your [1346] handwritten initial?

A. Yes.

Q. And what did that initial signify?

Mr. Garrett: I object——

Mr. Andersen: We don't raise any question——

The Court: The objection is overruled.

Mr. Margolis: Objected to on the ground he is seeking to impeach his own witness.

Mr. Andersen: Particularly, may it please the court, the government says——

Mr. Rubin: I am not impeaching her at this stage of the game.

Mr. Andersen: The government says they want

(Testimony of Lynn Evanisech.)

to save time. We have the same letter in evidence. We introduced it ourselves. I can't understand it.

The Court: The objection is overruled. Let's get on.

Q. (By Mr. Rubin): All right. What did that initial signify?

Mr. Garrett: Objected to as assuming facts not in evidence.

Q. (By Mr. Rubin): What did your handwritten initial signify?

The Court: What facts? She just got through testifying she put it on there.

Mr. Garrett: He is assuming the initial signifies something, [1347] and there is nothing in the evidence to indicate that it signifies anything.

The Court: The objection is overruled.

Q. (By Mr. Rubin): What does that signify?

A. I put the initial on there—

The Court: Counsel, if you have any objections, either one of you, you may state them, rather than indicating your displeasure to the court's ruling by your conduct or your remarks to each other on the side.

Mr. Margolis: We were indicating no displeasure to the court's ruling. We just don't understand why the same exhibit has to be gotten in twice.

The Court: Counsel, if you have any objection, I again warn you that you must state them, and that you know how to state your objection.

Mr. Margolis: We have stated our objection.

The Court: You also know how to state that

(Testimony of Lynn Evanisevich.)

you don't understand something. I have made a ruling on it, and the matter will have to proceed orderly.

Mr. Andersen: The court was looking at me also?

The Court: I was looking at both of you.

Mr. Andersen: If I may express myself, it simply is, your Honor——

The Court: Do you have an objection to make, counsel?

Mr. Andersen: I object to this on the ground that it is [1348] cumulative. It is an exhibit already in evidence.

Mr. Rubin: If you want——

The Court: The objection is overruled. That exhibit is not in evidence. This is another piece of paper. It may be the original of that, or a copy of it. If counsel has some other purpose, it will appear or be developed. If it is cumulative, it is not material, and it will be subject to the same rule that all the rest of the testimony is admitted on, and it may be stricken in the event it is not connected.

Q. (By Mr. Rubin): Why did you place your initial upon that document, 236 for identification?

Mr. Garrett: Objected to as argumentative.

The Court: Did she ever answer the last question, what that signified?

Q. (By Mr. Rubin): What does this signify?

Mr. Andersen: I would like to object on the further ground that it is immaterial, and these

(Testimony of Lynn Evanisevich.)

questions are totally illogical, that no objections will be raised to the introduction of the letter in evidence, if he is laying the foundation, and we submit that a foundation is not necessary. I submit, may it please the court, that it is simply wasting time. He is simply laying a foundation which is unnecessary in view of the position that we take that there will be no objection to the letter. [1349]

The Court: The objection of counsel will be overruled, and the remarks of counsel that government counsel is wasting time will be disregarded by the jury.

Q. (By Mr. Rubin): What does this initial signify, this handwritten initial which you placed on there in my office this morning?

A. That this letter——

Mr. Garrett: That will be subject to my objection, your Honor?

The Court: You stated it. This is the third time. I have already ruled on it. I now rule on it again. It will be overruled.

Mr. Garrett: Yes, your Honor.

Mr. Rubin: Answer the question, please.

The Witness: What was the question, please?

The Court: Read the question.

(The question referred to was read by the reporter as follows:

(“Q. What does this initial signify, this handwritten initial which you placed on there in my office this morning?”)

(Testimony of Lynn Evanisevich.)

The Witness: That my initial is in the corner that I typed this letter.

The Court: I can't hear you.

The Witness: That I typed this letter and that my initial is in the corner. [1350]

Q. (By Mr. Rubin): Does it further signify that that letter was given to you to type by Mr. Zafran?

Mr. Margolis: Objected to on the ground that it has been asked and answered.

The Court: Objection sustained.

Mr. Rubin: I see from your Honor's ruling that she has testified——

The Court: She just got through testifying that that letter was given to her by Mr. Zafran.

Mr. Rubin: All right.

Q. Now with respect to Government's Exhibit 208 for identification entitled—I don't want to read the title of it—would you look at that exhibit. Does your initial appear in the lower right-hand corner of that exhibit? A. Yes.

Q. Was that placed there this morning also?

A. Yes.

Q. Now on that exhibit, what does your initial signify?

Mr. Margolis: Just a moment, your Honor. I object to that on the ground it is incompetent, irrelevant and immaterial, and that it is only necessary in the event that it is necessary to establish what the document is otherwise.

The Court: I think that is correct, counsel. If

(Testimony of Lynn Evanisevich.)

there [1351] is any doubt, as in connection with this exhibit as indicated by the witness in the last exhibit, and there is anything she did in connection with that letter that will refresh her recollection, then you may inquire about it, but otherwise there is no indication on her part that she doesn't know what it is or where it came from or anything else.

Q. (By Mr. Rubin): Looking at Government's Exhibit 208, I will ask you if that is a document that was given to you by Mr. Zafran for copying by you.

Mr. Andersen: What is the heading of that document?

The Court: It is No. 208 on the list.

Mr. Rubin: "Strike Committee Meeting."

The Witness: I couldn't positively say.

Q. (By Mr. Rubin): Is it your testimony that you do not know whether this is a document which was given to you by Mr. Zafran for copying?

The Court: You mean for her to copy that on something else or did she copy that? Did you write that?

Q. (By Mr. Rubin): Did you copy this from something that Mr. Zafran gave you to copy from?

A. I can't say positively that he handed it to me.

Q. Did someone in the office hand it to you to copy? [1352]

A. If I typed it; yes.

Q. Did you type it?

A. Yes.

Q. All right.

Mr. Andersen: Are you going to give these any numbers other than indicated on the list?

(Testimony of Lynn Evanisevich.)

The Court: No.

I don't know, maybe you were absent, but I indicated the other morning that the clerk would take this and it would be a part of the minutes and all exhibits as they came in would retain the same number as on the list.

Q. (By Mr. Rubin): Now I call your attention to Government's Exhibit 238 for identification and ask you whether this is a document that was typed by you.

Mr. Andersen: Pardon me. Did you say 228 or 238?

Mr. Rubin: 238.

Q. I ask you if you typed that document.

A. I typed the document.

Q. And from what did you type the document? From what did you copy the document, I should say.

A. I can't remember.

Q. Using this document to refresh your recollection, can you state from what you copied it?

A. No, I don't recall. [1353]

Q. You can't tell whether you copied this document or not, is that correct? You can't recall from what you copied it but you did type it, I understand?

A. Yes.

The Court: Where.

The Witness: Where?

The Court: Yes. Where did you type that?

The Witness: At the office.

The Court: What office? Union office?

The Witness: Local 33.

(Testimony of Lynn Evanisevich.)

The Court: And Local 36?

The Witness: Well, it is the same office.

The Court: It is the same office?

The Witness: Yes.

The Court: By the way, who is your immediate boss?

The Witness: Local 33.

The Court: Who gives you orders?

The Witness: The secretary-treasurer of Local 33.

The Court: Who is he?

The Witness: Pete King.

The Court: Pete King?

The Witness: Yes.

The Court: All right.

Q. (By Mr. Rubin): Now did Mr. Zafran or anyone in Local 36 give you [1354] orders to copy that document? A. I don't recall.

Q. Would anybody else at that office give you such orders?

Mr. Margolis: Just a moment. I object to that as calling for a conclusion and opinion of the witness.

The Court: Overruled.

Mr. Garrett: May I ask, if your Honor please, that I be shown these documents at least once in a while?

The Court: Counsel, when the trial started the matter was brought up of my own idea and I suggested that the list be made and copies be furnished

(Testimony of Lynn Evanisevich.)

and be made available. Have these been made available to you?

Mr. Garrett: No, your Honor.

Mr. Rubin: If your Honor please, I think it is necessary to make this statement: After court last night I invited Mr. Garrett personally at the elevator to come upstairs to look at these documents on the list which we proposed to offer today. He chose to decline that invitation. I was there until 10:00 o'clock last night and I was very delighted at any time to exhibit them to him. And Mr. Garrett, I am sure, will confirm that statement. Mr. Andersen was also present.

Mr. Garrett: I don't know what the effect of counsel's statement is, nor do I think that I have to account for my [1355] unwillingness to spend the evening with him. I have a right, I believe, to see these documents before they are presented to the witness on the stand. I haven't the slightest idea whether they have any applicability to my case or not, and certainly if I am permitted to glance at them I will not hold matters up.

The Court: You have a right to see them but I had thought by this time—we are here now for the second week in the matter of introducing evidence and this is one of the first things brought up—that counsel would have taken advantage of the order which I made upon the government that they should make available to you at periods of your convenience these documents.

Mr. Garrett: I think that that should have been

(Testimony of Lynn Evanisevich.)

done, and last night at the hour of 7:00 o'clock, when I had clients with me to do business with, that was not a period of my convenience. I had a committee meeting to attend at 7:30.

Mr. Rubin: It was 5:00 o'clock, Mr. Garrett.

The Court: Let's show them to counsel. It looks like about a hundred documents here.

Mr. Rubin: Not with these two witnesses, your Honor.

The Court: I know, not with these two witnesses, but the list here is very long, and the purpose and object of it was to prevent just this thing in delaying the trial, because you [1356] are entitled to look at the documents. And if every document is going to be examined and perused with the care that you usually do such things, Mr. Garrett, and the thoroughness with which you do them, why, we will not be out of here by Christmas.

Mr. Garrett: I think I can just glance at these documents, your Honor.

Mr. Rubin: This is just foundation testimony anyway.

The Court: Show them to him. He is entitled to see them before any witness does.

Mr. Garrett: Let me take a glance at these that you have shown the witness. I don't think I will hold you up very much.

What number do they start with?

Mr. Rubin: There they are.

The Court: Do they have a red pencil number?

Mr. Rubin: Yes.

(Testimony of Lynn Evanisevich.)

The Court: The number which corresponds with the number on the list? You have a copy of the list, do you not, Mr. Garrett?

Mr. Garrett: Yes, the list is before me on the table, your Honor, the list itself. [1357]

The Court: While you are looking at those and that last exhibit, which was 238, you say Mr. King is your boss?

The Witness: Yes.

The Court: Did he dictate that to you?

The Witness: He didn't dictate any Local 36 to me.

The Court: Did he write something for you to copy?

The Witness: No.

The Court: Do you work for anybody else besides him and Mr. Zafran, I mean in the office?

The Witness: Yes.

The Court: You do?

The Witness: Yes.

The Court: Who?

The Witness: From time to time a number of people.

The Court: Who in the union, either one?

The Witness: Well, Jeff Kibre, anyone that is a present representative. From time to time it varies.

The Court: Who have you done work for?

The Witness: Well, George Blancovich, McKit-

(Testimony of Lynn Evanisevich.)

trick, Patovan—there have been a number of men. I don't recall them all.

The Court: Did any of them? Do you recall any more?

The Witness: Oh, yes, I recall more of them.

The Court: Tell us who they are. I am just asking you now. [1358]

The Witness: Orlando. That is about all I can think of now.

The Court: Did any of them dictate that to you, Exhibit 238?

The Witness: I don't recall. This has been quite some time ago.

Mr. Margolis: May the record show the document is dated September 24, 1945?

The Court: What is that?

Mr. Margolis: I think the record should show that the document is dated September 24, 1945.

Mr. Rubin: Then it should also show that it is Local 36 of the International Fishermen & Allied Workers of America.

Mr. Garrett: I have now inspected, your Honor, all of the documents which have been presented to the witness.

The Court: Very well.

Mr. Rubin: Let me give you some more. This will be the next batch.

Q. Is that Gilbert Zafran's signature, Miss Evanisevich?

A. It looks like the signature.

The Court: Don't you know his signature?

(Testimony of Lynn Evanisevich.)

The Witness: It looks like it.

The Court: Don't you know Mr. Zafran's signature?

Mr. Margolis: Your Honor please——

Mr. Rubin: She has testified that she did know Mr. [1359] Zafran's signature.

Mr. Margolis: May I complete my objection? I want to object to your Honor's question on the ground that the question has been asked and answered. She is not an expert.

The Court: She testified she did work for Mr. Zafran and, counsel, the question is material.

Mr. Margolis: The point is that the question has been asked and answered.

The Court: No, it has not, not my question.

Mr. Margolis: May I complete this objection? When anyone——

The Court: Would you mind standing when you address the Court?

Mr. Margolis: When anyone other than an expert is asked the question, that is actually the only honest answer a person can give. Only an expert can tell whether it is a person's signature, and even he can't be sure.

The Court: All he does is give his opinion.

Mr. Margolis: That is right. All she can say is that it looks like that, and I submit your question has been asked and answered.

Mr. Rubin: In response to the last question, the rule is that when a person is closely associated with one who constantly signs his name that individual

(Testimony of Lynn Evanisevich.)

need not be an expert to state whether in their opinion that is the signature. [1360]

The Court: That is correct, counsel. And I am asking this witness, who has testified she works there, whether or not she knows Mr. Zafran's signature. People who do those things operate as a matter of business on signatures of other people. I am not asking if that is it, I am asking you if you know.

Mr. Margolis: May I have that last question?

The Court: I am not asking if that is his signature, but if she knows Mr. Zafran's signature when she sees it.

The Witness: Why, yes, I know it when I see it.

The Court: All right. Is that it?

The Witness: It looks like what I would know to be his signature; yes.

The Court: I see.

Q. (By Mr. Rubin): I now show you Government's Exhibit No. 228 for identification and ask you if you typed that document.

A. Yes.

Q. Where did you type that document?

A. In our office.

Q. The office in which Local 36 is located?

A. Yes, that is correct.

Q. Were you given an original document from which to prepare that document at Local 36?

A. Usually—what did you ask me? [1361]

(Testimony of Lynn Evanisevich.)

The Court: The reporter will read the question.

(The question referred to was read by the reporter, as follows:

“Q. Were you given an original document from which to prepare that document at Local 36?”)

The Witness: We usually are given an original document.

Mr. Rubin: Your Honor please, at this time I move the Court for permission to cross examine this witness on the ground that I am taken by surprise, that she is a hostile witness. Her appearance is obviously evasive and I think we can save a great deal of time if I were to ask her questions in the form of cross-examination rather than on direct.

Mr. Margolis: I assign counsel's statement as misconduct your Honor, and request that your Honor instruct the jury to disregard the statement of counsel. There is no indication of that.

Mr. Garrett: I think it now becomes incumbent upon counsel to produce for the Court, if he makes the request in good faith, the documents or the testimony on the basis of which he claims to be taken by surprise, and if he fails to do so I too shall assign his conduct as misconduct.

The Court: The request will be denied at this time. I do not think there is sufficient foundation that has been laid to grant the request. The jury have the ability and the right and privilege to de-

(Testimony of Lynn Evanisevich.)

termine for themselves the attitude of any [1362] witness. There is not sufficient foundation laid.

Mr. Margolis: Can we have a ruling on our assignment and request to the jury?

The Court: The jury will disregard counsel's remarks. Proceed.

Q. (By Mr. Rubin): Miss Evanisevich, did anyone besides Mr. Gilbert Zafran to your knowledge give you the original document from which this was prepared?

Mr. Andersen: Objected to as assuming something not in evidence, may it please the Court.

The Court: Objection overruled.

Mr. Andersen: As I understand it, there is no evidence as to who gave anybody that document.

The Witness: I can't say for sure.

The Court: The objection is overruled, counsel.

Mr. Andersen: What was the answer?

The Court: The witness said something and I was talking and you were talking. Let us have the reporter read the answer.

(The record referred to was read by the reporter as set forth above.)

Mr. Rubin: Then I think she added something to that.

The Witness: I mean any of the men could have given it to me. [1363]

The Court: What is the title of the document?

The Witness: Minutes.

(Testimony of Lynn Evanisevich.)

Mr. Rubin: Strike membership——

The Court: Let her read it.

The Witness: Strike membership minutes.

The Court: Does it give the organization? Let me see it a moment.

(The document referred to was passed to the Court.)

The Court: It says "Strike Membership Minutes," it doesn't say "minutes," does it?

The Witness: Strike membership minutes.

The Court: Of what?

The Witness: Of Local 36, International Fishermen & Allied Workers of America.

The Court: All right.

Q. (By Mr. Rubin): You typed this at the office of Local 36, is that correct? A. Yes.

The Court: Let me see now, Miss Evanisevich, is Mr. Zafran the only one who maintains an office there in connection with Local 36?

The Witness: Yes.

The Court: Do you recall whether or not most of the work you did for Local 36 was given to you by him? [1364]

The Witness: Yes, most of it was.

The Court: Most of it was?

The Witness: Yes.

The Court: So that if you did anything for Local 36 it would be the exception rather than the rule?

(Testimony of Lynn Evanisevich.)

Mr. Garrett: I beg your pardon?

The Court: Is that right?

Mr. Garrett: May I have that question read?

(The question referred to was read by the reporter as set forth above.)

Mr. Andersen: During what time, may it please the Court?

The Witness: Different work.

The Court: During the period of time that she has been talking about. She testified that she worked for Local 33 and Local 36. During any period of time that she did that is what I am talking about.

The Witness: Most of it.

The Court: Do you remember the last question?

The Witness: No.

The Court: Read it.

(The record referred to was read by the reporter as set forth above.)

The Court: Strike the last question, and the jury will disregard it. [1365]

Q. (By Mr. Rubin): Did anyone besides Mr. Zafran connected with Local 36 give you any work to do there? A. Yes.

Q. Who?

A. Well, after meetings one of the committee or chairmen would hand me something.

Q. The names of the persons that would give

(Testimony of Lynn Evanisevich.)

you such direction, please? Was that true with respect to Document 228?

A. I don't know who gave that to me.

Q. Would it be anybody but Mr. Zafran or someone who was at the meeting?

A. It might have been; yes.

Q. Who else might it have been?

Mr. Margolis: Just a minute.

The Witness: I don't know who was at this meeting.

The Court: She said it might have been. Were you there at the meeting?

The Witness: No.

The Court: Did you copy it that night?

The Witness: No.

The Court: When was the meeting, do you know?

The Witness: "Chairman called the meeting to order at 1:15 p. m." [1366]

The Court: You don't know whether you were there at the meeting or not?

The Witness: I don't take minutes for their meetings.

Q. (By Mr. Rubin): Is it customary at Local 36 that after the meetings are held and—is it customary that the original minutes are in writing?

The Court: How do you mean, in writing?

Q. (By Mr. Rubin): In someone's handwriting? Are the original minutes taken in someone's handwriting? A. Yes.

(Testimony of Lynn Evanisevich.)

Q. And those minutes are then given to you to copy, I believe you testified, is that correct?

A. Yes.

Q. Now that is the usual and customary procedure, is that correct?

A. Yes.

Q. Now, then, looking at the Document No. 228, is that the product of the copying of some original minutes?

Mr. Garrett: Objected to as calling for a conclusion. The document speaks for itself.

The Court: Objection overruled.

The Witness: It looks like it. [1367]

Q. (By Mr. Rubin): Would you keep your voice up?

A. This doesn't look like it was given in handwriting.

Q. You mean it was dictated to you personally?

A. No. This sounds like I took these minutes.

Q. You took them yourself?

A. Can I read them?

Q. Surely.

A. (Examining document.) Yes, I think I took these.

The Court: You mean you were present at the meeting?

The Witness: Yes.

Q. (By Mr. Rubin): Then you transcribed them, did you? A. Yes.

(Testimony of Lynn Evanisevich.)

Q. You typed them? A. Yes.

Q. Then they were filed in the files of the union, were they? Is that the customary procedure?

A. Yes, given to the secretary, Gilbert.

Q. Given to him or filed?

A. Yes.

The Court: When you took in those meetings you wrote down what occurred?

The Witness: Yes. [1368]

Q. (By Mr. Rubin): Now showing you Exhibit No. 208 for identification, I will ask you if you typed that document.

The Court: I thought we went over that once.

Mr. Margolis: That is what our records show.

The Court: You had 237, 208 and 228.

Mr. Rubin: Very well.

Q. I show you Government's Exhibit 209 for identification and ask you if you typed that document.

A. Yes.

Q. Was that document dictated to you by Mr. Zafran?

A. Why, I don't know if it was dictated or given in longhand.

Q. It was either dictated or given in longhand, is that correct?

A. Yes.

(Testimony of Lynn Evanisevich.)

Q. Is that a carbon copy? A. Yes. [1369]

Q. I see. Customarily what is done with the carbon copies of documents that you prepared on your typewriter?

A. Given to Mr. Zafran or filed.

Q. Given to Mr. Zafran or filed?

A. Yes.

Q. And what happens to the original in the event that it is a letter, customarily?

A. It is given to him for signature.

Q. And after signature is it mailed?

A. Yes.

Mr. Dixon: Can you hear, Mr. Strain, back there?

Juror Strain: Yes.

Q. (By Mr. Rubin): I show you a document No. 210, for identification, and ask you if you typed that document. A. Yes.

Q. Was that either dictated to you or given to you to copy by Mr. Zafran? A. Yes.

Q. Was this document either filed or given to Mr. Zafran after it was prepared and the original mailed, is that correct?

A. Well, that is what is usually done.

Mr. Garrett: May I have the question and answer read, please?

(The last question and answer were read by the reporter) [1370]

(Testimony of Lynn Evanisevich.)

Mr. Garrett: I would like to call your Honor's attention to the fact that the last ten minutes of questions have almost invariably been leading.

The Court: Nobody has objected to them. I don't think they were objectionable, anyhow.

Q. (By Mr. Rubin): I show you Government's Exhibit No. 218, for identification, and ask you if you typed that document.

A. I couldn't be positive.

Q. I call your attention to the initials in handwriting "LE" on the lower right-hand corner of that document, and ask you when you placed those initials there?

Mr. Garrett: That is assuming a fact not in evidence, your Honor.

The Court: Yes, it is.

Q. (By Mr. Rubin): Did you place those initials there yourself, Miss Evanisevich?

A. Yes, they are my initials.

Q. When did you place them there?

A. This morning.

Q. Where? A. In your office.

Q. What do those handwritten initials signify?

A. That I typed this.

Q. And where did you type it? [1371]

A. I type everything in our office.

The Court: Miss Evanisevich, do your initials signify that you typed it, or do they signify when you placed them there this morning you stated to Mr. Rubin that you typed it at that time?

(Testimony of Lynn Evanisevich.)

The Witness: I stated that I had typed it. This looks like my mistakes in the typing.

The Court: And what is your testimony now—that you did type it?

The Witness: Yes.

Mr. Rubin: All right. [1372]

* * *

Mr. Andersen: May it please the court, with respect to the identification of certain documents that the witness Miss Evanisevich was examined about yesterday, and certain other documents about which Miss Evanisevich will testify——

The Court: Which are numbers on the list?

Mr. Andersen: No. 27, for identification.

The Court: 227?

Mr. Andersen: 27, your Honor.

Mr. Rubin: This is one of the sequence numbers.

The Court: 27, for identification?

Mr. Andersen: 28 for identification; No. 218, which has not as yet been offered.

The Court: All right.

Mr. Andersen: And No. 252.

The Court: That is, four documents?

Mr. Andersen: Four documents. The defendants, and Mr. Garrett joins in this stipulation, will stipulate that these documents need not be authenticated by the witness, and that a sufficient foundation has been laid for identification purposes. [1383]

The Court: Identification a what? Let me see them.

(Testimony of Lynn Evanisevich.)

Mr. Andersen: As authentic documents, your Honor.

The Court: Authentic documents, you mean as being what they purport to be?

Mr. Andersen: Yes, your Honor.

The Court: All right.

Mr. Andersen: In other words, that brings the government up to the point where they can introduce them, make an offer to introduce them in evidence, and that is all Miss Evanisevich was called for.

We stipulate further, according to the request of the government, that Nos. 27 and 28 were mailed.

The same stipulation, so far as the defendants we represent will apply to—according to the type-written schedule, your Honor No. 236, No. 208, No. 238, No. 228, 209, 210 and 218. Is that correct?

Mr. Rubin: Very well. Thank you. [1384]

* * *

The Court: Very well. Then on Exhibit 252 the stipulation will be as the others, that is to say, that it is what it purports to be, with the date appearing upon it, except that the writing in ink at the bottom of 252 is not covered by the stipulation. [1385]

Mr. Rubin: That is correct, your Honor.

The Court: Is that correct?

Mr. Andersen: Yes, your Honor.

The Court: All right.

Mr. Rubin: So that there are no further questions as to the basis of the stipulation, that when

(Testimony of Lynn Evanisevich.)

your Honor refers to these documents being what they purport to be, they purport to be documents taken from the books and files of the defendant Local 36 and kept in the ordinary course of business.

The Court: No, they do not purport to be on their face that. Exhibit 27 purports to be a letter signed by Gilbert Zafran.

Exhibit 28 purports to be a letter bearing a date and signed by Gilbert Zafran.

Exhibit 218 purports to be a copy of a resolution.

Exhibit 252 purports to be a copy of a letter.

Now if your stipulation is enlarged to the point that those are taken from those files, that is another thing, is it not?

Mr. Andersen: I think the stipulation that we have offered is about as far as we can go in good faith or be asked to stipulate to, may it please the Court.

The Court: Then the stipulation is as I have just stated it?

Mr. Andersen: Yes, your Honor. [1386]

* * *

Mr. Rubin: The stipulation is agreeable to the government, if your Honor please, as stated by the court.

The Court: Very well. And Miss Evanisevich may be excused, is that correct?

Mr. Rubin: That is correct.

The Court: Subject to the order of the court to return upon call.

Mr. Rubin: That is correct.

The Court: You understand that?

Miss Evanisevich: Yes.

The Court: Very well.

Next witness.

EMERY S. JONES

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name for the record?

The Witness: Emery S. Jones.

The Clerk: Your address?

The Witness: 211 Virginia Place, Costa Mesa.

The Clerk: Take the stand. [1388]

Direct Examination

By Mr. O'Malley:

Q. You are sometimes known by the sobriquet of "Casey" Jones, are you not?

A. Yes, sir.

Q. What business are you in?

A. Commercial fisherman.

Q. What port do you fish out of?

A. Newport.

Q. Are you the owner of a boat?

A. No, sir.

(Testimony of Emery S. Jones.)

Q. What is the name of your boat?

A. Well, right now I have the Charlotte.

Q. What is your position on the boat?

A. Skipper.

Q. What is the name of that boat?

A. Charlotte.

Q. Directing your attention to May of 1946, were you a skipper on a boat at that time?

A. Yes, sir.

Q. What was the name of that boat?

A. Reliance.

Q. That was the Reliance? A. Yes.

Q. Who owned that boat? [1389]

A. Fresh Frozen Fruits. I think it was listed under E. H. Sherwood.

Q. You were the skipper of the boat at that time? A. Yes, sir.

Q. In your experience as a fisherman—by the way, how long have you been a fisherman?

A. All my life.

Q. In your experience as a fisherman, do the fishermen get paid a salary or a wage or do they receive compensation for the fish?

A. They share off, whatever the catch comes to, they share it.

* * *

They share off the catch. Whatever it is they share it up after expenses are paid.

Q. (By Mr. O'Malley): Directing your attention to May of 1946 again, what were you fishing for at that time, fresh fish?

(Testimony of Emery S. Jones.)

A. I was hauling in bait and fresh fish too.

Q. Where were you selling your fish at that time? A. Bayside Fish.

Q. Where is that located? [1390]

A. In Newport.

Q. Do you know who operates that establishment? A. George Naylor.

Q. During the month of June did you sell fish to Mr. Naylor?

A. I don't exactly remember.

Q. Directing your attention specifically to the period of the so-called strike, at that time did you sell fish to Mr. Naylor?

A. No, I didn't.

Q. You did not?

A. No, not during the strike I didn't.

* * *

Q. (By Mr. O'Malley): After the period of the strike, did you again sell your catch to Mr. Naylor?

A. Yes, sir.

The Court: Did you fish during the period of the strike?

The Witness: Well, I did a little fishing. I fished some barracuda but I never brought in any more anchovies or sardines where I had an order to sell them. I didn't have [1391] facilities to hold them.

* * *

(Testimony of Emery S. Jones.)

Q. (By Mr. O'Malley): Mr. Jones, are you a member of Local 36?

A. Well, right at the present time I am not.

Q. You are not? A. No.

* * *

Q. (By Mr. O'Malley): Have you ever been requested to join the organization which calls itself Local 36?

A. They have asked me to.

Mr. Garrett: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled. [1392]

Q. (By Mr. O'Malley): You say they asked you to. Can you tell us specifically who you were referring to?

The Court: They are going to object now because there is no foundation so you had better fix the time, place and person present.

Q. (By Mr. O'Malley): Do you remember the approximate date at which you were requested to join Local 36?

A. Well, they have been after me, they have asked me several different times in the last two years to join.

Q. Can you fix a time specifically immediately prior to the strike or thereabouts?

A. I believe it was along about in March.

Q. March of 1946? A. Yes.

(Testimony of Emery S. Jones.)

Q. Where was the conversation held?

A. At Kings Landing.

Q. At Newport? A. Yes.

Q. Who did you talk to there?

A. Mr. McLauchlan.

Q. Can you tell us what Mr. McLauchlan said?

The Court: Is he here?

(The defendant McLauchlan stood.) [1393]

Q. (By Mr. O'Malley): Is that the gentleman to whom you talked? A. Yes, sir.

Q. Let the record show that the witness indicated the defendant McLauchlan.

Can you tell us what was said by Mr. McLauchlan and what was said by you, just using your own language?

Mr. Andersen: In addition to our running objection to this line of testimony, we should also like to object on the ground it is incompetent, irrelevant and immaterial; also too far removed in period of time.

The Court: Objection overruled.

Mr. O'Malley: Will you mark these?

The Clerk: 29, 30 and 31.

(The documents referred to were marked Government's Exhibits Nos. 29, 30 and 31 respectively for identification.)

Q. (By Mr. O'Malley): Can you tell us what was said by the defendant McLauchlan and what was said by you?

A. Well, he came down and asked me if I

(Testimony of Emery S. Jones.)

wouldn't join up with the union and have my boys join up too, and at that time we were pretty short on cash, so I told him he would have to wait a little while until we got to making some money before we could join up.

So he told me that would be all right, that he [1394] would be back and see me later then.

Q. Very well. Now directing your attention specifically to May 20, 1946, did you have a conversation with the defendant McLauchlan? First let me show you this document, which has been designated as Government's Exhibit 29 for identification. I ask you whether you have seen that document before. A. Yes, sir.

Q. Can you tell the Court and jury what that document is?

A. Well, I put down \$5 on my initiation fee, that was supposed to be on the initiation fee to join up with Local 36.

Q. To whom did you put it down?

A. To Mr. McLauchlan.

Q. To the defendant McLauchlan?

A. Yes.

Q. Did the document designated as Government's Exhibit 29 for identification refresh your recollection as to the date?

A. What?

Q. I wonder if you can tell us by examining that document precisely what the date was.

A. Well, it was, I believe it was about along the

(Testimony of Emery S. Jones.)

time the strike was pulled off, somewhere just before or somewhere after, along in there. I don't remember exactly the date. [1395]

Q. Very well. This is a receipt given to you by the defendant McLauchlan?

A. Yes.

Q. What did you say to Mr. McLauchlan and what did he say to you at the time that receipt was given to you?

A. Well, he told me he would appreciate it very much if I could give him more so he could get everything straightened up, so I would be squared away with the union.

Q. Very well. I show you this document which has been designated as Government's Exhibit 30, for identification, and ask you to state what that is, if you know.

A. Well, that is a clearance card that they issued during the strike so that we could go fishing.

Q. When you say "they" who do you mean?

The Court: What is that number?

Mr. O'Malley: Government's Exhibit 30, for identification, your Honor.

A. I believe this card was issued by Phelps, if I remember right.

Q. (By Mr. O'Malley): Can you point to defendant Phelps in the court room?

A. That's him over there (indicating).

(The defendant Phelps stood up.)

Q. (By Mr. O'Malley): Is that the gentleman by whom this card was given? [1396]

(Testimony of Emery S. Jones.)

A. Yes sir.

Q. I show you Government's Exhibit 31, for identification, and ask you to state what that document is, if you know.

A. Well, we was hauling bait and we had to work seven days a week, and we couldn't get off to stand our picket duty, so we had to pay for somebody else to stand it in our place, so that is the receipt that Bob Phelps gave me for \$32 I paid him for picket duty for my crew for that day.

Q. What is the date, if you know? Can you fix the time?

* * *

A. Well, right offhand I can't truthfully remember all the dates.

Q. (By Mr. O'Malley): Can you tell us when it was with relation to the period when the strike began?

A. It was about three weeks after the strike started, approximately. [1397]

* * *

Q. (By Mr. O'Malley): Where did this conversation with the defendant Phelps take place?

A. At the hall at Local 36.

Q. Who was present besides yourself and the defendant Phelps?

A. If I remember right, George Sear was there, that was one of my crew members, and myself, and then there was two or three fellows there from the union that was working on the strike and one thing and another.

(Testimony of Emery S. Jones.)

Q. What was said by you and what was said by the defendant Phelps?

A. Well, I told him that I couldn't let my crew off to stand picket duty, so he suggested that I pay and have somebody else stand it in our place, so that was satisfactory with us, so I paid him.

Q. Did he give you anything in return?

A. He gave me that receipt.

Q. Consisting of Government's Exhibit 31, for identification?

A. Yes, sir.

Q. Very well.

Mr. O'Malley: Government's Exhibits 29, 30 and 31 are offered in evidence.

Mr. Garrett: Objected to as incompetent, irrelevant and [1398] immaterial and not binding on this defendant.

The Court: Objection overruled.

Mr. Margolis: We have our general objection.

The Court: You have your general objection. Admitted in evidence.

(The documents referred to were received in evidence, and marked Government's Exhibits 29, 30 and 31.)

Mr. Andersen: What is 29?

The Court: 29 is a receipt for \$5 initiation. That is what it says.

Q. (By Mr. O'Malley): During the period of the strike did you do any picket duty?

(Testimony of Emery S. Jones.)

A. No, sir.

Q. You did not? A. No, sir.

Q. Very well. Are you now a member of defendant Local 36? A. No, sir.

Q. I take it you were not a member prior to the purported membership which you obtained as a result of paying the dues indicated in Government's Exhibit 29, is that right?

A. That's right. [1399]

* * *

Q. (By Mr. O'Malley): During the first period of the strike, the first day of the strike, were you fishing at that time? A. Yes, sir.

Q. What did you fish for? Did you get a catch that day? A. Yes, sir.

Q. What did you do with your catch?

A. I took it out and dumped it.

Q. Prior to your taking it out and dumping it, did you make any attempt to sell it?

A. Yes, sir.

Q. Will you tell us about that, please? Tell us what you did, where you went and whom you talked to, if anybody.

The Court: What date was this?

The Witness: The first day of the strike.

Well, we had an order for five to six ton of anchovy or sardines a day and we brought them in.

Q. (By Mr. O'Malley): From whom? Who was the order from? [1400]

A. George F. Nehler. They was to go through him.

(Testimony of Emery S. Jones.)

Q. Very well. Proceed.

A. But we never knew anything about the strike, and we brought the fish in, and they asked us not to sell them to George on account that they was on strike.

Q. When you say "they asked us," to whom are you referring?

A. Well, when we came in we saw there was a picket line in front, and a boat in the back picketing his market.

Q. Mr. Nehler's market? A. Yes .

Q. Very well.

A. We pulled down to the end of the bay and tied up, and then I got ahold of Mr. McLauchlan there.

Q. Did you have a conversation with him?

A. Yes, sir.

Q. What did he tell you?

A. He tried to make arrangements for us to unload our fish at another dock, but it didn't seem to pan out satisfactory, because we was using Nehler's trucks, and we couldn't make any arrangements to get any truck, so naturally the fish being fresh fish, why, they started spoiling on us, and so we had to take them out and dump them.

Q. In your fishing, Mr. Jones, do you fish inside or outside the three-mile limit? [1401]

A. Both.

The Court: Had you ever had to dump a load of fish before because you couldn't dispose of them?

The Witness: No, sir.

Mr. O'Malley: Cross-examination.

(Testimony of Emery S. Jones.)

Cross-Examination

By Mr. Margolis:

Q. You testified that you couldn't arrange to do picket duty because you were working seven days a week, is that right? A. That's right.

Q. You were fishing seven days a week?

A. Yes, sir.

Q. And that fishing of seven days a week was during the period of the strike?

A. I was fishing—there is two different ways to look at that: I was hauling bait for sport fishing boats, which is included as commercial fishing, but still at the same time I wasn't fishing for fish that we sold through the market, other than sardines or anchovies.

Q. That is your general business, isn't it—fishing? A. That's right.

Q. Your general business is fishing for bait?

A. That's right.

Q. So you were doing, Mr. Jones, during the period [1402) of the strike that which you did most of the time anyway? A. That's right.

Q. And were you working seven days a week at it? A. That's right.

Q. This particular catch that you took out and dumped was also a catch of bait fish, was it not?

A. That's right.

Q. And you offered to sell the fish to a dealer who ordinarily buys bait, is that right?

(Testimony of Emery S. Jones.)

The Witness: That's right. Any place to get rid of them.

The Court: You mean that particular fish that day? That is what he is talking about.

The Witness: If I remember right, Mr. McLauchlan asked me if I would sell the fish to somebody else if he could find somebody that would buy them, and I told him I would. But it just happened that we didn't find anybody.

Q. (By Mr. Margolis): And the reason no one else would buy them is because they wanted you to sell the bait to Mr. Nehler, isn't that right?

A. I don't know.

Q. You don't know about that? Isn't it a fact that these other delaers told you that as long as you would not [1403] deliver to Mr. Nehler they would not buy from you, isn't that a fact?

A. You mean the other fish dealers told me if I wouldn't deliver to him they wouldn't buy from me either?

Q. That's right. A. No.

Q. Did Mr. McLauchlan tell you that?

A. No, he didn't tell me that.

Q. He told you the other dealers would not take the bait, is that right? A. No.

Q. He tried to make arrangements for you to sell the bait?

A. Yes, I believe he did, if I remember.

Q. And didn't he tell you that the other dealers would not take the bait?

(Testimony of Emery S. Jones.)

A. They didn't want it; they didn't have any use for it.

Q. Did he tell you they didn't have any use for it?

A. No, he didn't tell me that. But they wouldn't buy it if they didn't have any use for it?

Q. The fact is they didn't buy it because you wouldn't sell it to Mr. Nehler, you know that?

A. No.

Q. You don't know that? [1404]

A. No, that ain't right. Because I sold fish to all the dealers in the harbor, and nobody refused to take my fish.

Q. That wasn't during the period that you were refusing to sell fish to any particular dealer during the strike?

A. I sold fish to Larry Fisher during the strike, barracuda.

Q. But you had not made arrangements to sell that barracuda to Nehler originally?

A. I fish for him all the time.

Q. Isn't this what happened with regard to the bait, that these other dealers said that because you had made arrangements to sell the fish to Mr. Nehler, and you were not going to deliver the fish to Mr. Nehler, that they would not buy it from you?

Mr. O'Malley: I think he already answered that question, your Honor. A. No.

The Court: He answered it again.

Mr. Garrett, cross-examination?

(Testimony of Emery S. Jones.)

Cross-Examination

Q. (By Mr. Garrett): Was this load for bait—was it live bait?

A. No, sir; it was dead bait.

Q. Prior to the time you received that membership card in Local 36, I think you testified you had not belonged to Local 36 prior to that time?

A. Well, it was right a little bit before the strike or after the strike had started that I gave him the \$5 deposit for my initiation fee.

Q. And was that the first time you had ever belonged to this Local 36 organization?

A. No, I belonged to them in 1938 or '39, somewhere along in there.

Q. The same organization?

A. No, it wasn't the same as it is now.

Q. Same name?

A. There has been two or three different times there has been unions there. Once was the CIO. It wasn't the same as this. They started this up in the last few years, I believe.

Mr. Margolis: May I have the answer, please?

(The last answer was read.) [1406]

Q. (By Mr. Garrett): Up to 1946 you had belonged to just one other union organization, and that had been back in '38 or '39, is that right?

A. It was somewhere along in there; yes.

Q. Did you belong to any union organization in between? A. No, sir.

Q. Between '38 and '39 and 1946?

A. No, sir.

(Testimony of Emery S. Jones.)

Q. You don't know whether the one you belonged to in '38 or '39 was the same one as you joined in '46?

A. No, I don't remember, to be truthful about it. I don't remember whether it was the same union or not.

Q. Did you after June, '46, become a member of any other union organization?

A. No, sir.

Q. Did you become, after June, '46, a member of any other organization in Newport Beach that had to do with the price of fish?

A. No, sir.

Q. After 1946, or after May or June, 1946, did you become a member of any boat owners' association?

A. No, sir.

Q. I take it you are not now a member of any boat owners' association?

A. No, sir.

Mr. Garrett: No further questions, your Honor.

The Court: Redirect?

Mr. O'Malley: Just one question.

Redirect Examination

By Mr. O'Malley:

Q. You stated on cross-examination that you continued to fish during the period of the strike, is that right?

A. Yes, sir.

Q. How did you dispose of your catch during that time?

A. I sold it to boats outside of the harbor.

Q. Outside of the harbor?

A. Yes, sir.

The Court: That is, sport fishing boats or commercial?

The Witness: Sport fishing and a few commer-

(Testimony of Emery S. Jones.)

cial boats. At that time I don't believe there was any commercial boats out, but throughout the year we did.

Q. (By Mr. O'Malley): Was that your practice prior to the strike? A. Yes, sir.

Q. You did not sell any to Mr. Naylor during that period, is that correct? A. No, sir.

Mr. Andersen: That is objected to as asked and answered.

The Court: Let me see if I understand you correctly. Before the strike you fished for bait?

The Witness: Yes.

The Court: Which you sold to sports fishermen and to the fresh fishermen?

The Witness: To George Naylor; yes.

The Court: To both?

The Witness: Yes.

The Court: During the period of the strike you only sold to——

The Witness: To the boats.

The Court: ——to the boats?

The Witness: Yes.

Mr. Margolis: May I ask a question, your Honor.

Recross-Examination

By Mr. Margolis:

Q. Isn't it a fact that during the strike you sold fish to fish dealers at Newport Beach other than Mr. Naylor?

A. I just sold fish to one dealer in Newport and

(Testimony of Emery S. Jones.)

that was to Larry Fisher. I sold him some barracuda, that is all.

Mr. Margolis: That is all.

The Court: Every day?

The Witness: No, just one catch; one day.

Q. (By Mr. Margolis): You only offered him one catch for sale, is that right?

A. That is all I caught.

Mr. Margolis: That is all.

Redirect Examination

By Mr. O'Malley:

Q. Was that one catch going to a dealer who was picketed? A. No, sir.

The Court: What was the dealer's name that you sold the catch to?

The Witness: Larry Fisher.

Mr. O'Malley: No further questions.

The Court: You may be excused.

(Witness excused.)

The Court: Next witness.

Mr. O'Malley: Mr. H. R. Lee, please.

HERBERT RUSSELL LEE

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: Herbert Russell Lee.

(Testimony of Herbert Russell Lee.)

The Clerk: Your address? [1410]

The Witness: 2000 Newport Boulevard, Costa Mesa, California.

The Clerk: Take the stand.

Direct Examination

By Mr. O'Malley:

Q. What is your business, Mr. Lee?

A. Commercial fisherman.

Q. By whom are you employed, if anybody?

A. Right now I am not employed by anyone.

Q. Directing your attention to last May of 1946, were you employed as a commercial fisherman at that time? A. Yes, sir.

Q. By whom were you employed?

A. By E. S. Jones.

Q. He is the gentleman who sometimes is known as "Casey" Jones, is he not? A. Yes, sir.

Q. Where were you fishing at that time?

A. Newport Beach, sir.

* * *

Q. (By Mr. O'Malley): Did you catch any fish during May 1946? A. Yes, sir.

Q. Did you sell the catch? A. No, sir.

Q. Was the catch sold, to your knowledge?

A. No, sir.

* * *

Q. (By Mr. O'Malley): Prior to the period of the strike, taking your experience back for several weeks prior to the strike, you were fishing at that time, were you not? A. Yes, sir.

(Testimony of Herbert Russell Lee.)

Q. Did you have any catch during those few weeks prior to the strike? A. Yes, sir.

Q. Where did you sell that catch?

A. Bayside Fish Market in Newport.

Q. In Newport? A. Yes, sir. [1413]

Q. Do you know who operates that establishment? A. Yes, sir; George Naylor.

Q. Mr. George Naylor? A. Yes, sir.

Q. Now directing your attention to the period of the strike, the first day of the strike, did you make any sale to Mr. Naylor at that time?

A. No, sir.

Q. You did not? A. No, sir.

* * *

Q. (By Mr. O'Malley): Did you attempt to make any sale to Mr. Naylor? A. Yes, sir.

Q. Will you describe that attempt?

A. Well, we came in, we had about, I would say, roughly four ton of anchovies on the boat, and we were to sell them to George Naylor, and when we got to the dock we found out that there was a strike on and the place was picketed and the union forbade us to sell the fish to George Naylor.

* * *

Q. (By Mr. O'Malley): What was done with your catch, if anything?

A. We had to dump them, sir.

Q. Are you a member of Local 36?

A. No, sir.

Q. Have you ever been a member of Local 36?

A. No, sir.

(Testimony of Herbert Russell Lee.)

Q. During the period of the strike did you do any picket duty? A. Yes, sir.

Q. Will you tell us when you did it, as near as you can with relation to the period of the strike?

A. Shortly after we dumped our fish.

* * *

Q. You did picket duty during the strike?

A. Yes, sir.

Q. How many times? [1415] A. Once, sir.

Q. Did you make arrangements personally to do picket duty? Just state whether you did or not.

A. No, sir.

Mr. O'Malley: May this be marked for identification?

The Clerk: 32.

(The document referred to was marked Government's Exhibit No. 32 for identification.)

Mr. Andersen: No objection. You may offer it.

Mr. O'Malley: Thank you.

Q. I show you this document which is designated as Government's Exhibit 32 for identification and ask you whether you have ever seen that before.

A. Yes, sir.

Q. Will you tell us what that is?

A. That was a picket card they punched out the holes on the days you did picket duty, and that was also to let you know when you were to do picket duty again. It had the weeks marked off and the month.

Q. Whose card is it? A. That is my card.

(Testimony of Herbert Russell Lee.)

Q. That is your card? A. Yes, sir.

Q. Did you use that card in any way?

A. Yes, sir. [1416]

Q. What did you do with it?

A. They gave me that card. That was to identify yourself that you had done picket duty, and on what date by the punch mark on the margin.

Q. Who gave that card to you?

A. The union business agent.

Q. When was that done?

The Court: Who was it?

The Witness: A fellow by the name of McLauchlan.

The Court: Is he here?

Q. (By Mr. O'Malley): Can you point to him in the courtroom? A. Yes, sir.

The Court: Where is he?

The Witness: That fellow back there in the blue shirt.

Mr. O'Malley: Indicating the defendant McLauchlan.

Q. Was there any conversation at that time with Mr. McLauchlan?

A. Other than explanation of the card, sir; nothing other than the explanation of the card.

Q. Except that he told you what it was used for and how it was used, is that right?

A. Yes, sir.

Mr. O'Malley: Government's Exhibit 32 is offered in evidence. [1417]

(Testimony of Herbert Russell Lee.)

Mr. Garrett: I assume, your Honor, that this and all other exhibits are subject to my continuing objection and motion to strike?

The Court: Yes.

(The document referred to was received in evidence and marked Government's Exhibit No. 32.)

Q. (By Mr. O'Malley): You say you did picket duty once? A. Yes.

Q. Where was that done?

A. In front of John Horman's Fish Market in Newport.

Q. In Newport? A. Yes, sir.

Q. Tell us what you did when you were out there.

A. I was instructed to stand there and tell people not to go in because it was being picketed by the union, that they weren't to buy fish from that market.

Q. You were in Newport from time to time during the strike, were you not? A. Yes, sir.

Q. Do you know whether or not there were any markets in Newport that were not picketed, any fish markets? A. Yes, sir.

Q. There were? A. Yes, sir. [1418]

Q. How many were there?

A. There was only one that I knew of.

Q. What was the name of that market?

A. Fishermen's Coop.

The Court: Who owns that, do you know?

(Testimony of Herbert Russell Lee.)

The Witness: We didn't know much about it. I never sold fish there, but a fellow by the name of Larry Fisher was running it at the time.

The Court: Larry Fisher?

The Witness: Yes, sir.

Q. (By Mr. O'Malley): Did you have any other conversations with any members of this organization which calls itself Local 36?

A. Well, their business agent tried to get me to join the union several times.

Q. Who do you refer to as the business agent?

A. Mr. McLauchlan.

Q. Can you tell us when and where those conversations took place?

A. Well, before the strike took place he came down to our boat several times when we came in.

Q. At Newport? A. Yes, sir.

Q. How long prior to the strike was this?

A. I would say it was a week and a half or two weeks, [1419] sir.

Q. What did he say to you, if anything, and what did you say to him?

A. Well, he was telling us the advantages of the union and we argued back and forth the disadvantages and all that. It was more or less a joke to us.

Q. You did not join the union at that time?

A. No, sir. We signed a card but we never gave them any money.

Mr. O'Malley: Very well. Cross-examine.

(Testimony of Herbert Russell Lee.)

Cross-Examination

By Mr. Kenny:

Q. Mr. Lee, I wonder if you can help me on the difference between anchovies and sardines?

A. Well, sir, an anchovy is a little smaller fish and it is a different color.

Q. And the anchovy is used only for bait, is that right?

A. They do eat them.

* * *

Q. But these anchovies, do you catch them in sardine nets or do you have a special net?

A. You have a bait net and you can catch either anchovies or sardines.

Q. And anchovies when they get into a sardine net, what do the sardine fishermen do with them?

A. They usually have to steam their net because the webbing is too big for them to hold them and they will go through.

Q. So customarily tons and tons of anchovies are steamed out of nets and destroyed every year, isn't that right?

A. That is right.

Q. When did Mr. Naylor go into the business of buying —Mr. Naylor is a fresh fish dealer down there on the wharf, is he not?

A. That is right.

Q. When did he go in the business of buying anchovies?

A. I think he gets orders from time to time from different people. I wouldn't know exactly,

(Testimony of Herbert Russell Lee.)

because it is not my [1421] business, but he gets them for salt anchovies for bait and dry and stuff like that.

Q. This was going to be the first time, wasn't it, that you had ever taken any anchovies in to Mr. Naylor? A. No, sir.

Q. How long before that had you taken anchovies in to Mr. Naylor?

A. I worked from the 1st of May on this particular boat and we had taken in anchovies every time we had some extra.

Q. Did he sell those for food? Do you know what the purpose was?

A. They sold them for salt bait I think mostly.

Q. Salt bait? A. Yes, sir.

Q. Isn't it a matter of fact that Mr. Naylor had some contract for an experiment on salting anchovies, wasn't that it? A. I don't know.

Mr. O'Malley: That is objected to—very well.

The Court: What do you mean, salt bait?

The Witness: Well, they take these anchovies and salt them and cure them and use it for bait; for sports fishermen. They sell them at tackle stands all along the beach.

Q. (By Mr. Kenny): I want to get one other thing cleared up, and that [1422] is the only other question I have.

The Court: Are they good for bait?

The Witness: Yes, sir.

Q. (By Mr. Kenny): Now Larry Fisher, that is the Paladini Fish Market there?

(Testimony of Herbert Russell Lee.)

A. Yes, sir.

Q. And there is another market, the Fishermen's Cooperative Market, is that right?

A. I really don't know. I think they handle their fish through Larry Fisher or the Co-op, I am not sure.

Q. Paladini handles the fishermen's wharf, is that it?

A. I don't know what the connection is.

Q. That is your best impression?

A. It appeared so to me.

The Court: He said he doesn't know, counsel.

Mr. Kenny: That is all.

Mr. Garrett: I have a question.

Cross-Examination

By Mr. Garrett:

Q. On this day that you came in to Naylor's with a catch of sardines——

A. It wasn't sardines, it was anchovies.

Q. Thank you. You have corrected me.

On that day you were talking about, who did you talk to? [1423]

A. I talked to my captain.

Q. And he was the one that did the talking to Naylor, was he?

A. Yes, sir.

Q. And he was the one that did the talking to whoever was around Naylor's place picketing or otherwise?

A. Well, no, we came in, and when I found out it was picketed we got ahold of McLauchlan.

Q. Who did you find out from that it was picketed.

A. There was men around.

(Testimony of Herbert Russell Lee.)

Q. Did you see it or did someone tell you?

A. We came in and saw it.

Q. Then did you go ashore?

A. Yes, sir.

Q. And did you talk to anybody at Naylor's Market?

A. I didn't talk to no one in Naylor's Market; no.

Q. Did you hear anybody talk to anyone at Naylor's Market at that time?

A. No, sir. We got ahold of McLauchlan and we tried to get them——

Q. Was that at Naylor's Market?

The Court: Wait a moment. He hasn't finished his answer.

A. We tried to get them to let us sell those fish with the promise that we wouldn't bring any more in until the [1424] strike was over.

Mr. Garrett: I move to strike that as not responsive to the question.

The Court: Motion denied.

Q. (By Mr. Garrett): What I am trying to get at is who you talked to or who you heard Mr. Jones talk to at Naylor's Market, or did you have to telephone or get Mr. McLauchlan somewhere else?

A. I think we telephoned Mr. McLauchlan and he came down.

Q. So when you first came there to Naylor's Market you didn't have a conversation with any-

(Testimony of Herbert Russell Lee.)

body about whether you could deliver or not; is that right?

A. The fellows was in the rowboat in back of the market there in the bay, and they said that we couldn't come in there and deliver fish because it was on strike. [1425]

Q. And who was with you at that time?

A. We was on the boat at the time.

Q. You were on the boat? A. Yes.

Q. Do you remember what that conversation was, what you said or what Mr. Jones said, and what the man in the rowboat said?

A. I don't remember what we said, but when we found out we couldn't go there, we went to the city dock and tied up.

Q. You don't remember what was said?

A. No, sir, there was nothing——

Q. Just give me the substance of what was said either by the men in your boat or the men in the rowboat.

A. We just said—well, we figured out between ourselves that we would find out about it before we tied up and sold our fish, and so we went to the city dock.

Q. You must remember the substance of what was said; was there some conversation between the men on your boat and the men in the rowboat which you heard?

A. No. We came in, they hailed us and told us we couldn't come in there because the place was picketed, and that was all.

(Testimony of Herbert Russell Lee.)

Q. Anything else said at that time by anyone in your boat or in the rowboat that you remember?

A. There was no use to talk. We just went to the city [1426] dock.

Q. I am not asking you that; I am asking you what was said, if anything.

A. I don't remember anything else that was said.

Q. You don't remember anything else being said.

A. There was things probably said, but I don't remember it just offhand.

Q. I see. Then what did you and Mr. Jones do, where did you go from there?

A. We went to the city dock and tied up and got ahold of Mr. McLauchlan.

Q. Was that by telephone?

A. Yes, I believe we called him.

Q. Then did you go back to Neylor's market, or did you stay on the city dock?

A. We stayed at the city dock.

The Court: Has Neylor's market got a parking place in front on the water side?

The Witness: Yes.

Q. (By Mr. Garrett): That is on the bay side?

A. Yes, sir.

Q. When did you sign your application for membership in the union?

A. I signed one about a week and a half before the strike. [1427]

Q. A week before or a week after?

A. A week before. And he said I would be a

(Testimony of Herbert Russell Lee.)

member as soon as I paid up, but I never paid up. I just signed it to get rid of him.

Q. Did anyone else from your boat sign an application for membership in the union?

A. I think there were some, but I don't remember who.

Q. How many were in the crew?

A. Six.

Q. Then this conversation you had with Mr. McLauchlan was not at Neylor's, but was on the city dock, is that right?

A. I had no conversation with Mr. McLauchlan.

Q. That is what I am trying to get at. Were you present at any conversation with Mr. McLauchlan and yourself?

A. Yes, I was present when the captain talked to Mr. McLauchlan.

Q. Where was that?

A. I believe it was on the city dock, sir.

Q. And do you remember anything about what was said by either one of them?

A. The captain asked him to find out if we could sell our fish that day with the understanding that we wouldn't bring any more until the strike was over, and he was refused.

Mr. Garrett: No further questions.

The Court: Redirect? [1428]

Mr. O'Malley: Just a couple of questions, is all.

(Testimony of Herbert Russell Lee.)

Redirect Examination

By Mr. O'Malley:

Q. You stated that you didn't know the details of Mr. Neylor's business, is that correct?

A. That is correct.

Q. You are not employed by him, are you?

A. No, sir.

* * *

Q. (By Mr. O'Malley): You had no reason to have any acquaintanceship with the details of Mr. Neylor's business, did you? [1429]

A. No, sir.

Q. You are not employed by him, are you?

A. No.

Q. You are not under his control or direction in any way, are you? A. No.

Mr. Garrett: That calls for a conclusion, if your Honor please.

Q. (By Mr. O'Malley): Are you under his control or direction?

Mr. Andersen: He doesn't even fish any more, your Honor.

A. No, sir.

Q. (By Mr. O'Malley): Very well. Have you ever been under the control or direction of Mr. Neylor? A. No, sir.

Q. Very well. With respect to this catch which you say was dumped, did you have any interest in that catch? A. Yes, sir.

Q. What was that interest?

A. I had my share coming out of it.

(Testimony of Herbert Russell Lee.)

Q. Very well.

The Court: How did you fish there?

The Witness: We fished on shares, sir.

The Court: What were the shares?

The Witness: There was six men. [1430]

The Court: Boat share——

The Witness: Yes, and a share for each man on the boat, and a half share for the net.

The Court: Did the captain get an extra share?

The Witness: Yes, the captain got an extra half share.

The Court: Extra half share?

The Witness: Yes.

The Court: So there were six, seven, eight shares?

The Witness: Yes, sir.

The Court: Is that the way you always fish?

The Witness: All depends; some boats do and some don't.

The Court: On this boat, I mean.

The Witness: Yes.

The Court: You always had a crew of six?

The Witness: No.

The Court: When you had a lesser crew you had a lesser number of shares?

The Witness: Yes, sir.

Mr. O'Malley: That is all.

The Court: The witness may be excused. Next witness. [1431]

MORRIS SOUDER

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: Morris Souder.

The Clerk: Your address?

The Witness: 403 29th Street, Newport Beach.

Direct Examination

By Mr. O'Malley:

Q. Where do you live, Mr. Souder?

A. Newport Beach.

Q. What is your business? A. Fisherman.

Q. How long have you been in that business?

A. Thirteen years.

* * *

Q. (By Mr. O'Malley): Directing your attention to the month of May, 1946, were you engaged in the business of fishing out at Newport Beach at that time? A. Yes.

Q. What were you fishing for at that time?

A. Barracuda.

Q. For any other type of fish?

A. Well, we was catching a few mackerel, but we was specializing in barracuda.

* * *

Q. (By Mr. O'Malley): You were catching fish at that time, I take it? A. Yes.

Q. Did you sell your catch prior to the strike?

A. Yes.

Q. Where did you sell your catch?

(Testimony of Morris Souder.)

A. I sold them to Larry Fisher, in Newport.

Q. Prior to the strike? A. Yes.

The Court: How does he run his business, under what name—Larry Fisher?

The Witness: It was Paladini.

The Court: Paladini Fish Company? [1433]

The Witness: Yes.

Q. (By Mr. O'Malley): Did you sell your catch any place else?

A. No. I iced a lot of fish.

Q. You iced a lot of fish. Was there any place else——

The Court: Wait a minute. Is it your custom to ice fish?

The Witness: I iced them and saved them on the boat.

The Court: You are talking about before the strike now, are you not, counsel?

Mr. O'Malley: Yes, prior to the period of the strike.

The Witness: Yes.

Q. (By Mr. O'Malley): Where did you sell your catch at that time?

A. George Neylor's.

The Court: Did you ice fish then?

The Witness: Yes.

Q. (By Mr. O'Malley): Where was that sale made? Where is Mr. Neylor's place of business?

A. Bayside Fish Market, Newport Beach.

Q. Directing your attention to the period of the

(Testimony of Morris Souder.)

so-called strike at Newport, did you continue to sell your fish to Mr. Neylor? A. No.

Q. You did not. After the period of the strike did [1434] you sell your fish to Mr. Neylor?

A. Yes.

Q. Are you a boat owner or are you one of the crew? A. I am a boat owner.

Q. What is the name of your boat?

A. Louise.

Q. Do you have the entire ownership of that boat?

A. Yes, my name is on the papers.

Mr. Andersen: What is that, please?

The Court: Yes, my name is on the papers.

Q. (By Mr. O'Malley): Can you tell us approximately how much investment you have on that boat in round figure? A. Around \$4,000.

The Court: Mr. Souder, I don't think I quite understood your custom before the strike. You said you ice fish then?

The Witness: Yes, when we stayed out three or four days.

The Court: When you stayed out three or four days?

The Witness: Yes.

The Court: Not when you came in?

The Witness: No.

The Court: When you came in you sold it all?

The Witness: Yes.

The Court: And during the strike you said something about icing your fish?

(Testimony of Morris Souder.)

The Witness: Yes.

The Court: Did you change your custom during the strike?

The Witness: Yes, I did. [1435]

The Court: What did you do that was different during the strike than before the strike?

The Witness: I iced my fish and kept them, and I was coming in every evening.

The Court: You mean you iced them in your boat?

The Witness: Yes.

The Court: You kept them for the whole period of the strike?

The Witness: No, I had to get rid of them. I sold them.

The Court: You sold them?

The Witness: Yes.

The Court: I see; to fish dealers?

The Witness: Yes.

The Court: In Newport?

The Witness: Yes.

Q. (By Mr. O'Malley): To what fish dealers did you sell the fish during the strike?

A. To Larry Fisher.

Q. Larry Fisher? A. Yes.

Q. Do you know what the name of his establishment is?

A. Paladini. It was at that time, I believe.

Q. Are you a member of Local 36, this organization which calls itself Local 36? [1436]

A. No.

(Testimony of Morris Souder.)

Q. Have you ever been a member of Local 36?

A. Yes.

Q. What was the period of your membership?

A. When they first started the union down there.

Q. Can you tell us approximately when that would be?

A. Around 1936, '37.

Q. Did you have membership at the time of the so-called strike?

A. No, sir.

Q. Did you do any picket duty during the strike?

A. Yes.

Q. Did you make arrangements with anybody to do picket duty?

A. Yes.

Q. To whom did you talk?

A. Charlie McLauchlan and——

Q. Where was the conversation held?

The Court: He hasn't finished.

A. In the Union Hall.

Q. (By Mr. O'Malley): In the Union Hall?

A. Yes.

Q. Did you talk to somebody else beside Mr. McLauchlan?

A. I don't exactly remember. There was three or four other fellows there. [1437]

Q. When was this conversation with reference to the period of the strike?

A. It was on the last week of the strike, I believe.

Q. Do you see Mr. McLauchlan anywhere in the court room?

A. Yes, sir.

Q. Can you point to him, please?

(Testimony of Morris Souder.)

A. Over there with the blue shirt on.

Mr. O'Malley: Let the record show that the witness is indicating the defendant McLauchlan.

Q. (By Mr. O'Malley): You say you did picket duty during the strike. How many times?

A. Once.

Q. Where did you do picket duty?

A. At John Harmon's fish market in Newport Beach.

* * *

Q. (By Mr. O'Malley): Did you have any conversation with anybody else whom you see in the court room? A. No, sir.

Q. Are you employed by any fish dealer?

A. No, sir.

Q. Are you under their control or direction in any way?

A. I was at the time of the strike. I owed George——

Q. I beg your pardon? [1438]

A. At the time of the strike I did owe a little money.

The Court: To whom?

The Witness: To George Neylor Bayside Fish Market.

The Court: How much?

The Witness: It was around \$100, somewhere around there.

Q. (By Mr. O'Malley): Did you have any arrangement by which he paid you any wages or salaries?

(Testimony of Morris Souder.)

A. No, sir; only on a share basis. I could borrow on my catch.

The Court: In advance?

The Witness: Yes.

Q. (By Mr. O'Malley): Very well. When you fished did you fish inside or outside of the three-mile limit? A. Both.

The Court: When you sold your catch to George Neylor, did he get a share of your catch?

The Witness: No.

The Court: He did not?

The Witness: No, sir.

The Court: Were you obliged, or did you have some agreement with him that you had to sell your catch to him?

The Witness: No, sir.

The Court: So you could sell it to any other dealer?

The Witness: Yes, sir.

The Court: Did you ever? [1439]

The Witness: Yes.

The Court: At a better price than he offered, the same, or lesser?

The Witness: It was the same.

Q. (By Mr. O'Malley): I show you this document which has been designated as Government's Exhibit 33, for identification, and ask you to state if you know what it is. A. Yes.

Q. What is that document?

A. It is my clearance card from——

Mr. Andersen: We will stipulate it is a clear-

(Testimony of Morris Souder.)

ance card issued by the union. I have no objection to it going in.

Mr. O'Malley: If there is no objection, I will ask him what he understands it is.

Q. (By Mr. O'Malley): What was your answer, please?

A. It is a clearance card for picket duty that they give you at the office when you finished your picket duty. [1440]

Q. Did you obtain that from anybody?

A. Yes.

Q. From whom?

A. From Charlie McLauchlan.

Q. When did you obtain that?

A. The day that I stood picket duty the last week of the strike.

Q. Was anything said to you at the time you obtained that? A. Yes.

* * *

Q. (By Mr. O'Malley): Where were you when you obtained this?

A. At the Union hall.

Q. Do you know approximately when it was with reference to the period of the strike?

A. No, I don't.

Q. Was it early in the strike or late in the strike?

A. It was late in the strike.

Q. Who was present besides yourself? [1441]

A. Two fellows. One fellow that went with me

(Testimony of Morris Souder.)

and stood picket duty with me on the picket line.

* * *

Q. What was the name of that fellow who did picket duty with you?

A. Joe Dorsey.

Q. Who was there besides yourself and Mr. Dorsey?

A. And Johnnie Simpson.

Q. Did you talk to anybody when that was given to you?

A. I talked to—you mean in the union hall?

Q. When that document designated as Government's Exhibit 33 for identification was given to you, who gave it to you?

A. Charlie McLauchlan.

Q. You have testified that these other individuals were present at that conversation, is that right?

A. Yes.

Q. What was said by Mr. McLauchlan when he gave it to you?

A. He says, now you have that document there that I was eligible to pay up the days that I had missed in the picket duty on the time before all through the strike.

Q. Was it subsequent to the obtaining of this card that [1442] you did your picket duty?

A. Yes.

Q. Where did you do picket duty?

A. In front of John Horman's Fish Market in Newport Beach.

* * *

(Testimony of Morris Souder.)

Mr. O'Malley: Very well. Government's Exhibit 33 is offered in evidence.

The Court: Admitted.

(The document referred to was received in evidence and marked Government's Exhibit No. 33.)

Q. (By Mr. O'Malley): Do you know whether there were picket lines around all the fish markets in Newport during the period of the strike?

A. No.

Q. There were not? A. Yes.

The Court: Were there picket lines around the fish markets during the month of June?

The Witness: Every fish market?

The Court: Any one. [1443]

The Witness: Yes, there was.

The Court: Where was the picket line?

The Witness: It was in front of George Naylor's Fish Market in Newport.

The Court: For the whole month?

The Witness: Well, I wouldn't say for sure whether it was a whole month.

Q. (By Mr. O'Malley): Were there any dealers in Newport during the month of June who did not have picket lines around their place of business?

A. Yes.

Q. What dealers were those?

A. It was the Fishermen's Co-op and Frank Satori and Larry Fisher.

(Testimony of Morris Souder.)

The Court: What is the Fishermen's Co-op? who owns that?

The Witness: Most all the fishermen have gotten together and made up a kind of an association.

The Court: Are you a member of it?

The Witness: No, sir.

The Court: Is that the fishermen themselves?

The Witness: Yes.

The Court: Who runs that?

The Witness: I couldn't say who runs it. I never have [1444] been over there.

Q. (By Mr. O'Malley): Did you sell fish during the period of the strike to the fish dealers who were not picketed? A. Yes.

Mr. O'Malley: Cross examine.

* * *

MORRIS SOUDER

called as a witness by and on behalf of the government, having been previously sworn, resumed the stand and testified further as follows:

Cross Examination

By Mr. Kenny:

Q. Mr. Souder, regarding Mr. Naylor, didn't he help you buy an engine for your boat, the Louise?

Mr. O'Malley: Objected to as not within the scope of the direct examination.

The Court: What is that?

Mr. O'Malley: Objected to as not within the scope of the direct examination.

The Court: Overruled.

(Testimony of Morris Souder.)

Q. (By Mr. Kenny): Didn't he loan you money for the purchase of an engine for your boat Louise?

A. Yes, he did.

Q. How much was that?

A. \$300 or \$400.

Q. You said you borrowed on the catch in advance, is that right? A. Yes.

Q. If you went out and there was no catch, did you have to pay Mr. Naylor back?

A. No, sir.

Q. He lost on that too?

A. Well, the way it was fixed, whenever I did bring in a catch, it was taken out a little at a time.

Q. So he didn't lose his money if you failed to bring in a catch on that particular voyage, isn't that right? A. No, sir.

Q. But he would get it out of the next voyage?

A. Yes.

Q. And if he didn't get it out of that one he would get it out of the next one?

A. Yes.

Q. You took your fish, when you caught it, around to his wharf first, didn't you?

A. Yes.

Q. And any fish that he didn't buy, then you attempted to sell to other dealers, wasn't that your system? A. Yes.

Q. And you sold all that you could sell to Mr. Naylor, that is, all of the fish that you brought in, you sold him all that he would take, isn't that right, before you went to the other dealers?

(Testimony of Morris Souder.)

A. Up until the strike came, yes.

Q. I am asking about the general period before the strike. And you sold it to him regardless of what price he offered you, didn't you?

A. Yes.

Q. The live bait season came just around the time of the strike, didn't it? A. Yes.

Q. And you wanted a net for that purpose?

A. Yes.

Q. By the way, did you own your own net or did you borrow a barracuda net from Mr. Naylor?

A. I was using his nets at the time.

Q. Your father is a member of the crew of your boat, isn't he? A. Yes.

Q. And he owns a live bait net?

A. Yes. [1448]

Q. The live bait net, that is a fine mesh net, isn't it? A. Yes.

Q. More expensive than the ordinary type of net? A. Yes.

The Court: What is the mesh on a live bait net?

The Witness: Half an inch on the back part where they hold the small bait.

The Court: You mean it varies?

The Witness: Yes.

Q. (By Mr. Kenny): Your father is an active member of the union, Local 36, isn't he?

A. Yes.

Q. Didn't your father tell you that before he would loan you his live bait net that you would have to go down and straighten out your relationship with the union?

(Testimony of Morris Souder.)

Mr. O'Malley: Objected to as incompetent, not within the scope of the direct examination.

The Court: Overruled.

The Witness: Yes, he did.

* * *

Redirect Examination

By Mr. O'Malley:

Q. When you came into Mr. Naylor's place of business to sell your fish you did sell following the time when Mr. Naylor made you a loan; you didn't do so under any orders from Mr. Naylor, did you?

A. No, sir.

* * *

Q. During the period of time when you loaned Mr. Naylor some money, did you take any orders from him?

The Court: He loaned Naylor money?

Q. (By Mr. O'Malley): When you owed Mr. Naylor some money, did you take any orders from Mr. Naylor as to the time and place when you should fish?

A. No, sir.

Mr. O'Malley: That is all.

The Court: What is the most amount of money you ever owed Mr. Naylor?

The Witness: It was around—well, not at one time, I have owed him as high as \$150, but I always keep it down as low as I can. But at that time when I borrowed that money for the net, why I had some money in the bank and I couldn't get to it.

The Court: You had some what?

(Testimony of Morris Souder.)

The Witness: Some money in the bank but I couldn't get at it. The next day I went and brought it out and paid him [1451] for it.

The Court: You borrowed \$300 and then paid him back?

The Witness: Yes.

The Court: The next day?

The Witness: Yes, sir.

The Court: Well, now, is this a continuing practice with Mr. Naylor or was that an occasional thing that you owed him that money?

The Witness: We had to have it right way.

The Court: I mean, you owed him money all the time you have been fishing?

The Witness: No, sir.

The Court: How long have you owed him money at one time before you paid it back?

The Witness: It varies. I go and borrow money off of him and then I pay him out of the fish, and by the time I get another catch I would have to go and borrow more, and in that way I just kept owing him and me paying him back.

Q. (By Mr. O'Malley): His Honor's question I think was directed to determining how long that situation has prevailed.

Mr. Andersen: I think he answered. He said all the time, as I understood his answer, your Honor.

The Court: Was that right? Is that what you meant?

The Witness: No, sir. Mostly in the wintertime when [1452] times are rough, why, most generally

(Testimony of Morris Souder.)

a fisherman has to have somebody he has to fall back on to borrow money from when it gets kind of rough.

The Court: And you get yourself out of hock in the spring, is that right?

The Witness: Yes, sir.

The Court: And then in the summertime you do not owe anybody any money.

The Witness: That is right.

The Court: Is that the custom with you?

The Witness: Most generally it is.

The Court: I see.

Mr. Kenny: Could I ask him one question?

The Court: You say "when it gets rough," you mean when there isn't any fish? You mean in wintertime there isn't much fishing?

The Witness: That is right.

* * *

The Court: I asked you about borrowing money from some dealer down there and you said in the wintertime you had to have somebody to fall back on because the going was rough, but in the summertime you got out of debt early in the spring, and I think what Judge Kenny wanted to know was whether or not that was the custom usually among the fishermen, the rest of the fishermen.

The Witness: Yes, the majority of them is that way.

The Court: Do they all borrow from Mr. Naylor?

The Witness: No, sir. [1454]

(Testimony of Morris Souder.)

The Court: Do they usually borrow from the dealers?

The Witness: Well, they have other sources where they could go to borrow, from the finance companies, other places.

The Court: Finance companies and other places?

The Witness: Yes.

The Court: All right.

Q. (By Mr. O'Malley): After borrowing money from Mr. Naylor and selling your fish to him, did he pay you any different price than any other dealer was offering?

Mr. Kenny: Just a minute, your Honor. He hasn't testified he sold to any other dealers.

The Court: Yes, he testified he sold to other dealers.

Mr. Kenny: What Naylor didn't take.

The Court: He testified that he sold other dealers. Do you remember that question, Mr. Souder?

The Witness: Yes, I do.

Q. (By Mr. O'Malley): Did Mr. Naylor pay you any different price than any other dealer was offering you?

A. Yes, he has occasionally. The biggest portion of the time he pays the same as any other dealer.

The Court: When he pays a different price, does he pay more or less?

The Witness: More, usually.

Mr. O'Malley: No further questions.

The Court: All right. The witness is excused.

Mr. Garrett: I have a question or two. [1456]

(Testimony of Morris Souder.)

Recross Examination

By Mr. Garrett:

Q. Is Newport Beach your home port?

A. Yes.

Q. Your boat is registered from there, is it?

A. Yes.

Q. Is your boat documented? A. No.

The Court: What do you mean by that? What difference does that make?

The Witness: It is registered.

The Court: What is that?

The Witness: It is a registered boat.

The Court: He said, "Is it documented?" What does that mean?

The Witness: That means a lot.

The Court: It means what?

The Witness: It means a whole lot.

Mr. Andersen: The size of the boat, your Honor.

Mr. Garrett: Six ton they document.

The Court: What does it mean if you are documented, and if you are registered but not documented?

The Witness: A documented boat, a man has got to be signed on to it to run it; and a registered boat he doesn't.

The Court: In other words, a documented boat you have [1457] to have a crew, is that it?

The Witness: Yes. Or you can have a crew on either one.

(Testimony of Morris Souder.)

The Court: Well, if you register your boat and don't document it, what does that mean?

The Witness: Well, it is under tonnage.

The Court: In other words, your boat is too small to be documented?

The Witness: No, it isn't.

The Court: Will you explain what is the difference?

The Witness: I don't know.

The Court: All right.

Q. (By Mr. Garrett): How long is your boat?

A. 38 feet.

Q. There in Newport Beach you sell most of your fish, don't you? A. Yes.

Q. That has been true for some years past, hasn't it? A. Yes.

Q. During the past few years have you sold fish anywhere else than Newport Beach?

A. I have sold fish in Santa Barbara. That is when I was fishing up there.

Q. I take it by far the most of your fish that you have caught in past years you have sold in Newport Beach, is that right? [1458]

A. Yes.

Q. How many dealers are there that buy fish?

A. There is five at present.

The Court: That is, fresh fish?

The Witness: Yes.

Q. (By Mr. Garrett): There isn't any cannery at Newport, is there? A. Three.

(Testimony of Morris Souder.)

Q. Do the canneries sometimes finance boat owners? A. Yes, they do.

Q. The fresh fish dealers—does this co-operative buy, too, the one you called the co-operative, does it buy fresh fish?

A. I don't know what you mean.

Q. Well, you spoke of one of the dealers, I think—maybe it was some other witness—there is one fish buyer there that calls itself a co-operative, do you know that? A. Yes.

Q. What is the full name of that one?

A. I couldn't say.

Q. Whatever it is, you don't belong to it, is that it? A. Yes.

Q. You do not belong to it?

A. That's right.

Q. You don't sell your fish there? [1459]

A. No, sir.

Q. Do you usually find out what the prices are when you come in with a catch?

A. You can look at the report from the day before. As the fish come in they make out a report and send it to each market.

Q. Is that fish and game?

A. I couldn't say.

The Court: What do they do,—post it on a board?

The Witness: Yes, they either post it on a board or they put it up on the window in the market.

(Testimony of Morris Souder.)

The Court: That is from the day before?

The Witness: Yes.

Q. (By Mr. Garrett): Is that poundage and tonnage or is it dollars?

A. Poundage and tonnage.

Q. No price? Is there any price on that report that they post?

A. I don't believe—I don't know. I never pay much attention to the price.

Q. Do the other fish buyers there usually pay the same price as Mr. Naylor? A. Yes.

Mr. Garrett: That is all.

The Court: The witness may be excused. [1460]

You may be excused, Mr. Souder. Next witness.

The Witness: Thank you.

ARCHIE UNDERWOOD

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: Archie Underwood.

The Court: Your address?

The Witness: 1312 West Temple, L. A.

Direct Examination

By Mr. Schwartz:

Q. You are Mr. Archie Underwood?

A. Yes.

(Testimony of Archie Underwood.)

Q. Will you keep your voice up, Mr. Underwood, so we can hear you all the way back here. What is your business or occupation?

A. Truck driver.

Q. How long have you been a truck driver?

A. Last four years.

Q. 1946 were you working as a truck driver?

A. Yes.

Q. For what company?

A. L. A.-Seattle Motor Express.

Q. What were your duties as a driver for the L. A.-Seattle Motor Express in May of 1946?

A. Delivering freight and picking it up.

Q. To any particular points?

A. All over L. A., the Harbor.

Q. By the Harbor, do you include San Pedro?

A. Yes.

Q. Did you have occasion to deliver shipments of fish from Los Angeles to the fish dealers at San Pedro? A. Yes.

Q. Just how would you do that?

A. Well, they would bring the fish in on the truck from Seattle.

Q. From Seattle?

A. Yes, Bremerton, Washington, and bring it down——

* * *

The Witness: Yes. After it gets to L. A., we are what we call heavy duty drivers, take the rigs out to the different places where the freight goes and unload them, then if they have any freight to be picked up, we pick it up.

(Testimony of Archie Underwood.)

Q. (By Mr. Schwartz): In the course of your duties as a [1462] driver, you say you had occasion to deliver shipments of fish to the dealers at San Pedro, is that right? A. Yes.

Q. Where in San Pedro would you deliver the fish? A. Down on the fish wharves. [1463]

Q. I show you Government's Exhibit No. 1 and I ask you whether that is a picture of the wharf where you delivered the fish to the dealers in San Pedro. A. It is.

Q. Now on or about May 29, 1946 did you have occasion to make a delivery of fish to the fish wharf in San Pedro?

A. If I am not mistaken, I think that is the day I was turned around and they wouldn't let me on there.

Mr. Andersen: I object to that as not responsive.

Q. (By Mr. Schwartz): Just answer yes or no. The Court: The motion is denied.

* * *

Q. (By Mr. Schwartz): Will you state what happened?

A. Well, I was in the truck coming down the street to the fish wharf and they had the picket line and one of the drivers—I was driving and I pulled up to the man who was carrying the picket banner——

Q. You picked—— [1464]

The Court: He pulled up to the man who was carrying the picket banner.

(Testimony of Archie Underwood.)

The Witness: And I asked him what goes on, and he said, "We got the place tied up."

I said, what could I do?

So I called my main office here in Los Angeles and they told me to take it to the Wilmington Ice.

Q. (By Mr. Schwartz): Do you recall with whom you had that conversation with the pickets?

A. No, I don't.

Q. How many of them were there?

A. There was four of five up above the ones I was talking to.

Q. There were four or five what?

The Court: Up above. You mean back of the one you were talking to?

The Witness: Yes, back around the wharf.

Q. (By Mr. Schwartz): Do you see the man in court to whom you were talking? Will you look around and see?

A. I wouldn't recognize him if I saw him now.

Q. You wouldn't recognize him if you saw him?

A. No.

Q. What did you do with that load of fish?

A. I took it to the Wilmington Ice at Wilmington.

Q. By the way, to whom was that fish consigned, do you recall?

A. No, I don't. There was about six different bills.

Q. Six different what? A. Bills.

Q. Bills? A. Yes.

Q. You mean six different shipments?

(Testimony of Archie Underwood.)

A. Yes.

Q. Six different consignees?

A. That is right.

Q. And they were the fish dealers at San Pedro?

A. Yes.

Q. Thereafter and for the month of June did you make any further deliveries of fish consignments to the dealers at San Pedro?

A. No, we took it to Wilmington.

Q. You took it to Wilmington? A. Yes.

Q. You mean the ice company there?

A. Yes.

Q. When again did you resume, if at all, deliveries of shipments of fish to the dealers at San Pedro, that is, to their place of business? [1466]

A. I don't remember the date but it was after the strike men was gone.

Mr. Schwartz: You may cross-examine.

Mr. Andersen: Just one question, your Honor.

Cross-Examination

By Mr. Andersen:

Q. How far is the Union Ice Company at Wilmington from this dock where the dealers have their places of business, approximately? How many miles? A. About five miles.

Mr. Andersen: That is all.

* * *

The Court: Next witness.

CARL B. TENDICK

called as a witness by and in behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name, sir?

The Witness: Tendick; T-e-n-d-i-c-k; Carl B.

* * *

Direct Examination

By Mr. Schwartz:

Q. You are Mr. Carl B. Tendick?

A. I am, sir.

Q. What is your business or occupation?

A. I am a fishery marketing specialist in charge of the San Pedro office of the Fish and Wildlife Service.

The Court: Of what?

The Witness: Fish and Wildlife Service of the Department of the Interior.

* * *

Q. What are your duties as the fishery marketing specialist? [1468]

A. Well, there are two basic functions that are carried on in my office. We have conducted statistical surveys of the fisheries of California. I have been directly in charge of those statistical surveys for quite a number of years.

Q. How many years?

A. Well, I have been on this coast now for 21 years, and I have conducted the surveys for California each of those years.

Two years ago we added another function, that of collecting and disseminating market news in-

(Testimony of Carl B. Tendick.)

formation on the fisheries. That is what we call our market news service.

The Court: What was the first service?

The Witness: Statistical surveys.

The Court: Of what, of the number of fish or where they came from or what?

The Witness: The production, the number of operating units, that is, the number of fishermen, the number of boats, type of gear that they use in catching the fish.

The Court: Areas where they catch the fish?

The Witness: Areas where they catch the fish.

The Court: Type and kind and varieties of fish?

The Witness: Yes.

The Court: I see. That is your first function?

The Witness: That is my first function. [1469]

The Court: And the second one is the marketing statistics?

The Witness: Yes. The second function of market news service has been delegated largely to my assistant, Mr. Harry Hinkle who more or less supervises and manages that function.

Q. (By Mr. Schwartz): Is he directly under your supervision and control? A. Yes.

* * *

Q. What is the source, or what sources do you get your information from for the market news service?

A. At San Pedro Mr. Hinkle either goes down to the markets and actually copies the records of their purchases of fish from the fishermen.

(Testimony of Carl B. Tendick.)

The Court: Every day? [1470]

The Witness: Every day, or his secretary telephones them if he is absent from the city.

At Newport we call the dealers down there by phone.

The Court: Every day?

The Witness: Yes.

At San Diego we have what we call a market news aide who is stationed at La Jolla and that aide phones the markets in San Diego and then transmits it to us generally by teletype, radio teletype through the Navy or directly by phone.

At Santa Monica we phone the two dealers there directly.

The Court: There are only two dealers at Santa Monica?

The Witness: Only two dealers at Santa Monica.

The Court: That is fresh fish you are speaking of?

The Witness: That is fresh fish; yes.

The Court: This is not canneries?

The Witness: No, we do not get any of the data on cannery fish other than there are two of the dealers—the two dealers at Santa Monica buy mackerel for the canneries and we do get that information.

Q. (By Mr. Schwartz): Do you distinguish in your reports between the fish that is used for the canneries from Santa Monica and those——

A. No, sir, not in our published report.

(Testimony of Carl B. Tendick.)

Q. Now how are your records kept for these statistics?

A. Well, the market news statistics, we of course publish [1471] each day the deliveries from the previous day. Then at the end of each month we compile those into a monthly summary, and then we publish a monthly summary of those deliveries.

We publish that separately for the Santa Monica-San Pedro dealers, the Newport dealers and the San Diego dealers.

The Court: What items do you show on that?

The Witness: We show all the deliveries of fish.

The Court: That is, the kind and variety?

The Witness: Kind and variety.

The Court: Number of pounds?

The Witness: Number of pounds.

The Court: Price per pound?

The Witness: No, we do not get data on price.

The Court: You do not get data on price?

The Witness: Well, we sometimes get it but we are not publishing it.

The Court: In other words, you concern yourself with the flow of quantity and variety?

The Witness: That is right.

There is other information that is published in our market news service. We publish data on imports, we get reports from the shark liver auctions at San Francisco which we publish whenever there is an auction.

The Court: I mean with relation to fresh fish.

(Testimony of Carl B. Tendick.)

The Witness: I am just pointing out there is other data [1472] that we do publish in that market news service.

Mr. Schwartz: Will you mark these?

The Clerk: 34 and 35.

(The documents referred to were marked Government's Exhibits Nos. 34 and 35 respectively for identification.)

Q. (By Mr. Schwartz): Mr. Tendick, this information that you gather is broken down into species of fish? A. That is right.

Q. And the volume of fish per month?

A. That is right.

Q. Now sometime last year were you requested by the Department of Justice to compile statistics showing the species of fish and the poundage brought into San Pedro and Santa Monica wholesale fish dealers by fishing craft as reported to the market news service, Fish and Wildlife Service, San Pedro, California, for the period August 1945 through June 1946? A. I was.

Q. Did you make or have caused to be made such a compilation? A. I did.

Q. Did you submit that compilation to representatives of the Antitrust Division of the Department of Justice? A. I did. [1473]

Q. Were you requested to make the kind of—

The Court: Where did you get the data?

The Witness: I took it directly from the monthly summaries as we had published them.

(Testimony of Carl B. Tendick.)

The Court: In your published records?

The Witness: That is right. [1474]

Q. (By Mr. Schwartz): Were you requested to make the same kind of compilation for deliveries of fish to San Diego wholesale fish dealers by fishing craft as reported to Market News Service at your office for the period October, 1945, through June, 1946?

A. I was.

Q. And the same for Newport Beach?

A. I was.

Q. And did you submit those compilations to the Department of Justice?

A. I did.

Q. I show you what has been marked for identification as Government's Exhibits 34 and 35 and ask you whether those are the compilations which were submitted to the Department of Justice.

A. They are.

Q. Will you state, Mr. Tendick, how those compilations were gotten up and by whom?

A. Pardon me if I have to, perhaps, recollect and review this.

The Court: You can take your time to look at it, Mr. Tendick, if you wish.

A. I can see by the writing that the compilations, that is, the actual copying of the monthly summaries was done by my secretary. [1475]

Q. (By Mr. Schwartz): What is her name?

A. Mrs. Merle Lovell.

Q. Is she under your supervision and control?

A. Yes.

Q. Go ahead.

(Testimony of Carl B. Tendick.)

A. I also know that I checked them personally. I do wish to comment on one other statement here, one other point here, that this Market News—we have not gotten reports from one of the dealers at San Pedro. There is one that has consistently refused to give us the information. The other eleven, we do get it from them. So that this compilation——

The Court: What is his name? Somebody is going to ask that sooner or later.

A. Catalina Fish Company, I think it is.

Q. (By Mr. Schwartz): Catalina Fish Company? A. Yes.

Mr. Garrett: Is that Catalina Fish and Oyster Company?

The Witness: My understanding is it is just Catalina Fish Company.

Also, in this compilation, since it included the mackerel fish purchased by two dealers in Santa Monica for canneries, I requested those two concerns to give me their monthly purchases of mackerel that they had delivered to the canneries, and I subtracted that from the total that we had in our monthly summaries to arrive at only the mackerel and other species that [1476] were delivered to the fresh fish dealers, and went into the fresh fish trade.

I mention that because I want to make it clear that the cannery mackerel is not in this compilation.

Q. (By Mr. Schwartz): You say you personally checked those compilations. When was that check made by you?

A. Immediately after my secretary copied the figures. I added the columns; I compared it; I personally made the subtractions of the cannery mackerel; checked the monthly and also the total.

Q. Then as to the accuracy of the poundage of fish brought into San Pedro, is it a fact, then, that the poundage would be less than the total poundage because you would have to subtract the Catalina Fish Company figures which are not reported.

A. That's true.

The Court: What is that, the poundage would be less? The poundage reported?

Mr. Schwartz: Yes.

The Witness: The poundage reported, yes.

Mr. Schwartz: We offer in evidence Government's Exhibit 34 and 35.

Mr. Margolis: I have some questions on voir dire.

Mr. Garrett: May I see the summaries, also, if your Honor please? [1477]

Mr. Margolis: May I ask some questions on voir dire?

The Court: Yes.

Voir Dire Examination

By Mr. Margolis:

Q. As I understand it, these figures on Government's Exhibit 34, for identification, do not include the figures for only one company, that is, Catalina Fish—is that right? A. Yes.

Q. Is that the company of which Mr. Vitalich is the manager?

(Testimony of Carl B. Tendick.)

A. I think that is correct.

Mr. Margolis: Can we have a stipulation that that is the Mr. Vitalich who was the government witness here?

Mr. Schwartz: Yes. At least, Mr. Vitalich is connected with the Catalina Fish Company, I will stipulate to that. [1478]

A. As I said before, generally he goes down and actually copies the data from the records. Sometimes when it is inconvenient for him to go down there he telephones the individual concerns.

Q. When he goes down and copies the information from the records, he goes into the office of a fish dealer and says, "Will you show me your slips for today?"

A. That has become entirely unnecessary. They have already made out the tickets and purchases on what we call the fish and game tickets. He is familiar where each dealer keeps those tickets, and they grant him the privilege of going in and copying them, taking whatever data he wishes off of them without asking.

The Court: Now the custom is he just walks in like he belongs there?

The Witness: He just walks in and copies them and walks out again.

Q. (By Mr. Margolis): If for some reason the fish dealer on any particular day or particular period did not put all of his tags in the customary place, then your man would get only part of the information, that is right, isn't it?

(Testimony of Carl B. Tendick.)

A. That is right. [1479]

Q. Then on the days that telephone information is obtained from San Pedro, you rely entirely upon what the fish dealer tells you, is that right?

A. That's right.

Q. If the fish dealer for any reason wants to give you a wrong figure, has a personal interest in giving you a wrong figure, you don't know that, you just have to take the figure?

A. We accept the figure he gives us.

Q. There is nothing in the law which requires him either to give you any figure at all or to give you a true figure if he does give you one, isn't that so?

A. That is true.

Q. Now, with regard to Santa Monica, you get your information there always by telephone?

A. That is true.

Q. And there, too, you rely entirely upon the information that is given you, and if the figure is reported to you incorrectly by a thousand per cent, you would have no way of knowing the difference, would you?

A. Well, I wouldn't say that we could be off a thousand per cent, because we are too well informed upon what is apt to come in there.

The Court: Do you have other data concerning the poundage? Is that right?

The Witness: Surely. [1480]

Q. (By Mr. Margolis): What other information do you have concerning the poundage?

A. We have, of course, the historical records

(Testimony of Carl B. Tendick.)

of what is landed in the entire, you might say, San Pedro-Los Angeles County area for a period of years, and we know more or less what to expect.

Q. The fact is that there are tremendous variations from month to month and year to year with regard to various species of fish, isn't that so?

A. Yes. But my point is this: if there are fish coming into Santa Monica, Mr. Hinkle goes down to the markets in San Pedro, there is nine chances out of ten he is going to find out or be informed as to whether there is anything coming in at Santa Monica, and no one can deliberately say, "Well, we didn't get anything," because we would generally know that certain boats or some fish had been landed there.

Q. During a period when no fish is being delivered to San Pedro, then you would have no check on the accuracy of the figures at Santa Monica, isn't that so?

A. Well, we still contacted the San Pedro dealers, and dealers throughout that period, and we found out where fish was coming in.

Mr. Schwartz: Throughout what period?

The Witness: The period when the strike was in progress.

Q. (By Mr. Margolis): Why do you refer to that period? [1481] I didn't inquire about that period.

A. I speak of that because that was the period that there might be any question. We do always, regardless of—when there is no fish in, we have

(Testimony of Carl B. Tendick.)

had that situation several times at San Diego, when there was no fish delivered, and we would check to find out whether it was just failure of our side to obtain a report or whether it was actually true that there was no fish obtained.

Q. Do you generally keep your San Pedro and Santa Monica figures together?

A. We combine them daily, yes.

Q. And make just one report for the two?

A. Make one report for the two.

Q. Do you have separate figures for Santa Monica and San Pedro?

A. No, I do not compile separate figures for San Pedro and Santa Monica, the reason for that being that we consider—we will not publish any data that concerns less than three concerns. That would have the possibility of showing private enterprise.

Q. Do you know whether there are any publications of separate figures for Santa Monica?

A. I do not know. I don't think there are.

The Court: You say there are only two fish buyers in Santa Monica? [1482]

The Witness: Yes. There may be a few minor ones that handle small quantities.

The Court: I mean commercial?

The Witness: Yes, that handle any commercial quantities.

Q. (By Mr. Margolis): This information which is contained on Exhibit 34, for identification, was obtained, in the first instance, from monthly published summaries, is that right?

(Testimony of Carl B. Tendick.)

A. That's right.

Q. Where are those monthly published summaries?

A. Well, they are distributed to various people in the industry that are on our mailing list. We attempt to retain one copy of them in our files, but I am not certain that we have a complete file of every month.

Q. I see.

The Court: Do you file any in the library any place?

The Witness: No.

The Court: For instance, do you file one in the Municipal Reference Library at the City Hall?

The Witness: I don't think so.

The Court: Or the Harbor Department Library?

The Witness: The Chamber of Commerce at San Pedro may get a copy.

The Court: You mean they may be on your mailing list?

The Witness: Yes, they may be on my mailing list. [1483]

The Court: They are public records; you give them to anybody who asks for them?

The Witness: Yes, they are public records. We send copies for our Washington, D. C. files.

Q. (By Mr. Margolis): Both these daily or monthly summaries are mailed to all of the fish dealers, aren't they?

A. Well, to our mailing list. There are, possibly, some fish dealers that are not on the mailing list. Very few.

(Testimony of Carl B. Tendick.)

Q. Probably there are none that aren't on your mailing list, isn't that so?

A. I don't know of any that are not, offhand.

Q. Do you have the summaries for the period covered by Exhibit 34, for identification?

A. Not with me.

Q. Do you have them in your office?

A. As I say, I think there is possibly one missing. I am not certain.

Q. Would that be for just one species of fish?

A. It would be one of the monthly summaries, one of the months.

Q. Do you know what month that would be? Would that be June, 1946?

The Witness: No. I think it is February, 1946.

Q. (By Mr. Margolis): With that exception you have all of the rest of them. [1484]

A. I am pretty sure we have.

Q. You could produce them here?

A. I think we have the record for that month—we show, generally, for instance, we show March and we will show also February as comparative figures; so I think on the March one we do have a record of what was published in February.

Q. So that actually this Exhibit 34 is available in the form of about nine or ten separate single sheet summaries, the originals of which you have.

A. That's right.

Q. It would be a relatively easy matter to produce those?

(Testimony of Carl B. Tendick.)

A. With the exception that I have taken the cannery mackerel out of those summaries.

Q. Do you have a separate report with regard to cannery mackerel?

A. Only from those two firms who buy cannery mackerel—I mean who buy mackerel for the canneries.

Q. You do have a summary for that?

A. I say I have got a separate report from those two firms.

Q. When did you get that?

A. At the time that it was requested by the Department of Justice. [1485]

The Court: In connection with the preparation of this data?

The Witness: In connection with the preparation of this data.

Q. (By Mr. Margolis): How about tuna, is tuna sometimes delivered to Santa Monica and sold to the cannery?

A. Not that I know of. They may purchase some from their regular market boats and turn it over to the canneries, but they are not, as I understand it, regularly assigned by the canneries to purchase for them.

Q. Now this Exhibit 34, to make it quite clear, contains no references—I will withdraw that.

This Government's Exhibit 34 for identification excludes all figures with relation to fish sold directly or indirectly to the canneries, is that correct?

A. That is right.

Q. So take, for example, in the month of June

(Testimony of Carl B. Tendick.)

1946 it is entirely possible that the total amount of fish delivered during that month to the canneries and the fish dealers was greater, say, than in May, April, March or February of that year, is that right? . A. It could be possible.

The Court: Would you have that data in your office?

The Witness: No, I don't.

The Court: Do you gather data as to the fish delivered to the canneries?

The Witness: In our, what we call our, historical statistics we rely entirely upon the State's collection of the [1487] raw material.

The Court: So at the end of the year you take the State's figures on the amount of fish delivered to canneries?

The Witness: Yes, that is right.

The Court: All right.

Q. (By Mr. Margolis): Directing your attention for a moment to Exhibit 35 for identification. That is the San Diego sheet. A. Yes, sir.

Q. Now that information is obtained always by telephone, is that right?

A. Yes. On a few occasions Mr. Hinkle has been down there and has gone to the individual dealers himself, but that is not commonly done.

Q. The practice is to get it by telephone?

A. Yes.

Q. And again, as in the case of Exhibit 34, you rely upon the information that is given you, is that right? A. That is right.

(Testimony of Carl B. Tendick.)

Q. All of your other testimony with regard to exclusion of cannery fish which you gave with regard to Exhibit 34 is also applicable to Exhibit 35, is it not? A. So far as we know it is; yes.

Q. What do you mean by so far as you know?

A. Well, there again it is quite possible that a wholesale [1488] fish dealer might buy from his particular boats. We will say he might buy more yellowtail than he desires for his immediate customers, and if he so desires he can turn around and sell it to a cannery.

Q. I notice, for example, that with respect to yellowfin, that in the month of June 1946 more than twice as much yellowfin is reported on here as in any other month. A large part of that might have gone to the canneries, is that right?

The Court: At San Diego?

Mr. Margolis: I am talking about San Diego. I am referring to Exhibit 35.

The Witness: It could have.

The Court: Do they have canneries in San Diego?

The Witness: Yes.

The Court: How many, do you know?

The Witness: There were four operating at that time. There are five now.

Q. (By Mr. Margolis): So that if we compare Exhibit 34 with Exhibit 35 we can say with regard to Exhibit 34 that that is only fish sold to the fresh fish dealers, as far as the information you have got, to the extent that it is accurate, whereas Exhibit 35 may include cannery fish?

(Testimony of Carl B. Tendick.)

A. Very little, if it does.

Q. You don't know if it does. [1489]

A. I don't know.

Q. So it may include cannery fish, is that right?

A. It could include a small percentage.

Mr. Margolis: We will object to the document.

The Court: Let me see the documents.

(The documents referred to were passed to the court.)

The Court: On what ground?

Mr. Margolis: On the ground that there is an insufficient foundation laid, that it is obvious that they are hearsay, that it cannot be ascertained with regard to exhibits exactly what they include or do not include; there is no basis for relying upon the figures because of the fact that they are obtained from persons who at least during a part of the time might have had an interest in giving erroneous information concerning the amount of fish which was delivered to them, and who were not obligated by law or otherwise to give accurate information.

Also on the ground that the original records are not bulky and they are available, although I want to say, in all frankness, that we would also object to the original records. But if anything is to be introduced it ought to be the original records.

The Court: The original records you have in your office from which you compiled this, do you?

The Witness: Yes. [1490]

(Testimony of Carl B. Tendick.)

The Court: You have no objection to making those available to counsel who want to see them?

The Witness: Be glad to.

The Court: Very well. The objection is overruled. Exhibits 34 and 35 are admitted in evidence.

(The documents referred to were received in evidence and marked Government's Exhibits 34 and 35.)

The Court: Do any counsel desire to see the original reports from which he compiled these figures? [1491]

* * *

The Court: * * * Any further questions?

Mr. Margolis: I am not through cross-examining this witness.

The Court: I thought you had finished.

Mr. Margolis: I had taken the witness on voir dire.

Mr. Schwartz: I am through on direct and he can take him on cross-examination now.

The Court: All right. Counsel, would you prefer to have this witness return next week and bring with him the copies of the documents for your cross-examination?

Mr. Margolis: I think that we can get a large part of it down now and it may not be necessary. I don't want to keep the witness, or make him come back if it is not necessary.

The Court: You are entitled to have the other documents.

(Testimony of Carl B. Tendick.)

Mr. Margolis: I would like to cross-examine him now and perhaps we can excuse him.

The Court: All right. [1496]

* * *

Cross-Examination

By Mr. Margolis:

Q. When were you asked to prepare Government's Exhibits 34 and 35?

A. As I recall, it was along in July or August.

Q. Of 1946? A. Of 1946.

Q. Did you receive the communication with regard to this matter by mail, written form, by telephone or by someone talking to you in person?

A. As I recall, it was requested in person.

Q. It was a personal conversation between yourself and somebody else? A. Yes.

Q. With whom did you talk?

A. As I recall, it was Mr. Schwartz.

* * *

Q. (By Mr. Margolis): Was there more than one conversation? A. I think there were two.

Q. Now I want to limit myself first of all to the first conversation. Will you tell us to the best of your recollection what Mr. Schwartz said to you and what you said to Mr. Schwartz concerning this matter?

A. As I recall, the first conversation was in my office in which he asked me directly about the information that we collected with respect to the market fish, and our data on that.

(Testimony of Carl B. Tendick.)

Q. I wonder if instead of telling us the subject matter if you would try to summarize what Mr. Schwartz said.

The Court: I think that is what he is doing counsel.

Mr. Margolis: He said the subject of the conversation was with respect to something. If I may suggest, if you start by saying, Mr. Schwartz said, and then if you could go on from there.

The Witness: I would hesitate to attempt to even quote him directly. [1498]

Q. (By Mr. Margolis): Summarize what he said.

A. He wanted to know how we obtained the data and whom we got it from, where we published it, and to whom it was distributed, and such general information.

Q. What data did he ask you about?

A. He asked me about the data, what data was available with respect to the San Pedro-Santa Monica—at first he was particularly anxious to get San Pedro separately, and I told him that we did not have San Pedro separately, that we included the Santa Monica dealers in our report with the San Pedro ones.

I was also asked regarding the period of time for which we had published the data for San Diego and for Newport.

Q. Did he ask you for San Diego and Newport also, is that right?

A. As I recall, he wanted it for a longer period.

(Testimony of Carl B. Tendick.)

He wanted it for a long enough period so he could have comparative data with previous years, but we did not start the service until, I think it was, August of 1945, consequently we had no comparative data prior to that time. That was August 1945 for the San Pedro area, and I think it was several months later at San Diego, and we did not start Newport until later than that even. And he inquired particularly about dates we started it and what data was available.

Q. When did you start preparing your material for Newport? [1499]

A. Offhand. I don't remember. I think it was in May 1946.

Q. May of 1946? A. Yes.

Q. Were you asked to prepare the material for Newport Beach for a more limited period than the material for the other areas?

A. Well, I had advised him what period was available and what period we had covered, and that was the only thing that we could supply.

Mr. Margolis: At this point it is indicated, your Honor, that we will have to have the records, and I would like to ask—I had hoped that we could avoid it—but I would like to ask that the witness be directed to return at some time convenient to the Court and possibly to the witness.

The Court: Of course these are matters that are published of which you can take judicial notice and you can use the reports that he has in connec-

(Testimony of Carl B. Tendick.)

tion with any argument that you wish to make, but if you feel that it is necessary——

Mr. Margolis: I do feel that it is necessary, your Honor.

The Court: To test the correctness of these, that this witness who has made these compilations has produced——

Mr. Margolis: I believe it is necessary, your Honor, and I would like to have him bring the records from the inception [1500] of the time that the records were being prepared. I understand that that only takes us back to some date in 1945.

The Court: That is the regular compiled reports that he makes?

Mr. Margolis: That is right, the regularly compiled reports from the beginning of their preparation through the month of June 1946 for San Pedro and Santa Monica, San Diego and Newport Beach.

May I ask one more question?

Q. Those are the three reports that you have?

A. Yes.

Q. Which cover the Southern California area?

A. That is right.

Q. You have no other reports? A. No.

The Court: Can you bring those when convenient?

The Witness: I think so.

I would like to ask one question. You wish the monthly summaries? You do not wish copies of the daily reports?

(Testimony of Carl B. Tendick.)

Q. (By Mr. Margolis): Are the daily reports very bulky?

The Court: I think the monthly summary is sufficient.

The Witness: They are.

Mr. Margolis: All right. We would like to have the daily reports, if we might, for the year 1946 for San Diego [1501] and Newport Beach. Could that be done?

The Court: I will not order him to bring those. Just bring up your monthly reports from the inception of what you call the market service.

The Witness: Market news service.

The Court: Market news service from month to month from the time that you began it up until now when you finished your last report.

The Witness: All right.

The Court: And Tuesday?

Mr. Margolis: That of course would be satisfactory. However, I do have a reason for asking for the daily reports from those two areas, your Honor.

The Court: Yes, no doubt. I think I understand it, but I think you should be limited to the other reports.

Mr. Garrett: May the record show that we join in that request, your Honor.

The Court: The record will show that you join in that request and object to my order.

Mr. Garrett: Yes, your Honor.

(Testimony of Carl B. Tendick.)

Mr. Margolis: May I ask this, if it isn't too inconvenient, could we ask at least that the witness bring along a month or two of those reports? We don't want to inconvenience him but we would like to have some of those daily reports, let's say, even for the months of April, May and June, or [1502] May and June, some of them?

The Court: You mean May and June 1946?

Mr. Margolis: Yes. That is what we are talking about. They are all on one sheet, I believe.

Q. That is right, isn't it? A. Yes.

The Court: A daily report?

The Witness: Yes.

Mr. Margolis: It is all one sheet.

Q. Do you issue one on Sunday too?

A. No, we only issue them five days a week.

* * *

Mr. Margolis: I would like to reserve further cross examination, your Honor.

The Court: Tuesday at 2:00 o'clock?

The Witness: That will be all right.

The Court: Very well. You will return at that time with those documents.

The Witness: Yes.

The Court: Further cross examination will be reserved. You may be excused now. Return then, will you?

GEORGE F. NAYLOR

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk. Your name?

The Witness: George F. Naylor.

The Clerk: Your address?

The Witness: 208 Emerald, Balboa Island.

Direct Examination

By Mr. Schwartz

Q. You are Mr. George F. Naylor? [1505]

A. That's right.

Q. What is your business or occupation, Mr. Naylor?

A. I am a wholesale fish dealer.

Q. Where? A. At Newport Beach.

Q. How long have you been in the wholesale business? A. Since 1937.

Q. Continuously at the same place?

A. Yes.

Q. Will you state what kind of business you conduct at Newport Beach?

A. We buy fish from the fishermen, and in turn distribute them to other wholesale dealers, and to some restaurants and hotels.

Q. Where are your customers for the most part located?

A. Well, our customers, our hotel and restaurant customers and markets are in Newport Beach,

(Testimony of George F. Naylor.)

Balboa, and Laguna; our wholesale customers are in Los Angeles, Arizona, Utah and Washington. Also in Northern California, San Francisco, Oakland, Sacramento.

Q. Will you relate the conduct of your business as it regards the purchase of fish?

A. Well, we buy our fish from the fishermen at whatever the market price happens to be, and in turn we sell them at whatever the market is. [1506]

Q. Your place is known as the Bayside Fish Market, is it not? A. That's right.

Q. What is your relationship to that Bayside Fish Market?

A. I operate the Bayside Fish Market.

Q. Is it a copartnership, a corporation, or an individual company?

A. Bayside Fish Market is an individual company.

The Court: You own it?

The Witness: That's right.

The Court: Your own and operate it.

The Witness: That's right.

Q. (By Mr. Schwartz): Where is the Bayside Fish Market located?

A. At 2800 LaFayette, Newport Beach, on the water front.

Q. On the water front? A. Yes.

Q. Do you have a fish landing there for boats to tie up at? A. That's right.

(Testimony of George F. Naylor.)

Q. Do you operate any boats of your own?

A. Yes, sir.

Q. How many?

A. At the present, four. [1507]

Q. How large are these boats?

A. Well, they vary from, I think, 26 feet up to 51 feet in length.

Q. How many members are on the crews of these boats?

A. Well, some of the crews—some of the boats operate with just one man in the crew, and others operate with as many as seven.

Q. On what basis do these people work, as far as their compensation is concerned?

A. Well, they sell their fish to us just the same as any other fisherman would sell them to us, and I take share for the boat and either half a share or share for the gear that is on board, depending on the type of gear that they use.

Q. The fishermen, are they paid in wages or paid on a share basis?

A. Paid on a share basis.

Q. Do those fishermen work for you as employees?

A. Yes—no, not as employees, no.

Mr. Margolis: Just a moment, your Honor. I didn't have a chance to object to the question. I move to strike the answer for the purpose of making the objection. I object to the question on the ground that it calls for the opinion and conclusion

of the witness. What is an employee is a conclusion of law. [1508]

The Court: The objection is overruled.

* * *

Q. (By Mr. Schwartz): How do they work for you, on what basis?

A. I give them the boat to operate, and they pay me the share; I don't pay them. In that sense they are not employees.

Mr. Andersen: I move the latter be stricken as a conclusion of the witness, your Honor.

Mr. Schwartz: I submit it is competent, if the court please.

The Court: It may be stricken. I think the jury are here to draw a conclusion in connection with it. Whatever the facts are, they can decide them.

Q. (By Mr. Schwartz): About how many boats in the course of a year do you buy fish from, Mr. Naylor? A. That is difficult to say.

Q. Approximately.

A. Oh, I would say during the course of a year we probably buy from 50 different boats.

Q. Varying sizes? A. Yes.

Q. Are all of those boats stationed at Newport, or are they from other ports as well?

A. They are from other ports as well as Newport. [1509]

Q. How is the fish which you state you sell to customers in points outside of the State of California handled as far as transportation and shipment is concerned?

(Testimony of George F. Naylor.)

A. Well, we ship—outside of the State, you said?

Q. Yes.

A. We ship by American Railway Express or by truck lines.

Q. How is it accomplished?

A. How is that?

Q. How is the transportation accomplished?

A. We deliver the fish to the Railway Express Company.

Q. Where?

A. In Newport Beach or Los Angeles or Santa Ana, or—we deliver to truck companies in Los Angeles for reshipment.

Q. Do these truck companies or Railway Express Company come to your place of business for pick-up? A. No.

Q. Do you specialize, as far as sales are concerned, in any particular line of the fish business?

A. No, we buy all types of fresh fish.

Q. With specific reference to your dealing in shark livers, what do you say as to the nature of your business?

A. That is a part of our business, and we do buy and sell them, but we don't particularly specialize in them.

Q. Will you state—— [1510]

The Court: What about anchovies for bait?

The Witness: We buy those, too.

The Court: Is that usually bought and sold by fresh fish dealers?

(Testimony of George F. Naylor.)

The Witness: No.

The Court: How come you do?

The Witness: Well, I do it because I just happen to have trade that buys it.

The Court: Where is that trade? Do you ship it out?

The Witness: We deliver usually to the bait stands up and down the beach. That is our principal source of sale.

The Court: That is, to the commercial boats?

The Witness: No, not to the commercial boats. You have seen these little bait stands all along the highway that buy anchovies and sell them to the sport fishermen, as a rule?

The Court: You mean with those big signs: Stop here and get your bait and catch a fish?

The Witness: That's right.

The Court: All right. Let me see if I understand that now. You buy anchovies—they are dead?

The Witness: That's right.

The Court: They are not live fish.

The Witness: No.

The Court: They are fresh.

The Witness: Yes. [1511]

The Court: And you sell them up and down from where to where?

The Witness: Just along the coast there, from Belmont Shores down as far as—down through Laguna and that way; sometimes further to San Clemente or Oceanside.

(Testimony of George F. Naylor.)

The Court: Is that the general and usual practice of fresh fish dealers?

The Witness: Well, I don't think it is, no.

The Court: In other words, do you have any competition?

The Witness: Yes, we do; from the fishermen themselves.

The Court: They sell it.

The Witness: They also do that.

Q. (By Mr. Schwartz): Where do you sell your shark livers?

A. Well, in the past we have principally sold to the Washington Laboratories in Seattle.

* * *

Q. (By Mr. Schwartz): How many people are employed at your place of business?

A. Do you mean how many people are employed in my fish market?

Q. Yes.

A. There are five besides myself. [1315]

Q. How did you conduct the sales end of the business?

A. By telephone or telegraph.

Q. Now in May of 1946 were you conducting your business along the lines of which you have just testified to? A. Yes.

Q. Did anything occur towards the end of May 1946 which interrupted that general course of business?

A. Yes. I was presented with a contract by Mr. Phelps and Mr. McLauchlan.

(Testimony of George F. Naylor.)

Q. Are those gentlemen in the court room?

A. They are.

Q. Will you point them out, please?

A. Mr. Phelps is the gentleman in the tan shirt.

Mr. Schwartz: Will you stand up?

(The defendant Phelps stood.)

The Witness: And Charlie McLauchlan is next to him.

(The defendant McLauchlan stood.)

Mr. Schwartz: May the record show that the witness identified defendants Phelps and McLauchlan.

The Court: So ordered.

Q. (By Mr. Schwartz): I show you Government's Exhibit No. 3 and ask you whether you received a contract like that from defendants Phelps and McLauchlan at the time of which you just testified? [1516]

A. (Examining document) Yes.

Q. Now what was said at the time this contract was presented to you?

A. They presented me with the contract and told me——

Q. Who said what? Let's get it straight.

A. All right. Mr. McLaughlan and Mr. Phelps presented me with a contract. Mr. McLauchlan told me that all of the dealers in Southern California were to be presented with this contract and he thought that they would sign up.

I told him that I would have to look the contract

(Testimony of George F. Naylor.)

over and submit it to my attorney before I would give him my answer on it.

That was virtually all of the conversation at the time.

Q. Did Phelps say anything at the time?

A. I don't remember whether he did or not. Probably he did, but I don't recall what it was.

Q. How long did this whole incident take place?

A. Probably 10 or 15 minutes.

Q. Do you recall approximately what date that was that the contract was presented to you?

A. I don't. It was towards the latter part of May.

Q. Did you sign that contract?

A. I did not.

Q. Now thereafter what, if anything, occurred with [1517] reference to the conduct of your business?

A. Well, a few days later Mr. McLauchlan came back to see me and asked me if I had signed the contract, and I told him that I hadn't signed it and that I hadn't heard from my attorney at that time.

Then he came back and I believe Mr. Phelps was with him the next time and asked me if I had signed it, and I told him then that my attorney had advised me that in his opinion it was a price-setting agreement and that it was illegal, and that I couldn't sign it.

Q. What did he say?

A. He said, "Well, that's too bad."

Then within a few days, I have forgotten just

(Testimony of George F. Naylor.)

how long it was, they placed a picket line in front of my place of business and on the waterfront side a rowboat.

Q. Will you describe the picket line in front of your place?

A. Well, there was about two or three men from the union in front of my building that would stand there and direct my customers down to my competitors' places of business.

Q. Did you see this? A. Oh, yes.

Q. With your own eyes? A. Yes, sir.

Q. Did you hear these requests? A. Yes.

* * *

The Witness: And they directed my customers down to my competitors' markets, the Cooperative Fishermen's Market was one and the other was Larry Fisher, and the third one was the Western Cannery, that was all buying fresh fish at that time, and told them that we were unfair to the union and that these other firms were fair.

Q. (By Mr. Schwartz): Were they successful in diverting some of these customers?

A. They were.

Q. You said something about a boat in front of your place.

A. Yes. Then they had a boat on the waterfront side of my place, and any boat that would attempt to come up to the dock they would warn them that we were unfair and that they should deliver their fish to the same competitors down the

(Testimony of George F. Naylor.)

bay and—well, I think that essentially that was what they said. [1509]

Q. Did this boat have a sign or placard of any kind?

A. At first they didn't have a sign or placard. Towards the end of their picketing they did have a sign.

Q. What did the sign say, if you recall?

A. It said, "Unfair to Union Labor." I believe that was what it said. I am not sure about that.

Q. How long did that situation obtain with regard to the pickets in front and this boat on the water side?

A. Well, as I remember, it continued right through June. Towards the end of June they took the picket line off, I believe. I don't recall the exact date.

Q. During that period of time did boats come up to your place of business and tie up regularly as they had done before?

A. Well, some of our boats did, our own boats, the boats that we owned, or that I owned and operate, and discharged their fish.

Q. Is that all?

A. Well, other boats, even our own boats, other boats that I operate or own outright, came in and they were permitted to discharge the first load when the picket line was up there and after that they were told that they couldn't discharge any more fish or they would be blackballed and wouldn't be allowed to sell their fish at any other place.

(Testimony of George F. Naylor.)

Q. What about other boats than you own?

A. I believe there were a few other boats that went through the picket line and delivered fish to us.

Q. Approximately what percentage of the purchases by your company is represented by the purchases from the boats in which you have an interest?

A. Well, I would say that there is about 40 per cent——

Mr. Garrett: Objected to as calling for hearsay.

The Court: Objection overruled. A man ought to know his own business.

Mr. Garrett: I think he does. My objection is based upon the best evidence and hearsay objection on the theory that his books are the best evidence in this.

The Court: The objection is overruled.

The Witness: About 40 per cent. [1521]

Q. (By Mr. Schwartz): Now of that 40 per cent which is regularly represented in your purchases, or normally, was there any reduction during the month or so that the pickets were at your place of business?

A. Oh, yes, a very material reduction. The fact of the matter is I think only one of our boats continued to deliver fish to us.

The Court: That is, one of the boats you own?

The Witness: That is right.

The Court: That is, only one of the boats you own of not only those boats but all the other boats who deliver fish to you?

(Testimony of George F. Naylor.)

The Witness: No, I wouldn't say that. There were some other boats that were independent boats that delivered to us, but very few of them.

The Court: I do not understand your answer.

Mr. Schwartz: I don't either.

The Witness: We have a number of boats of our own.

The Court: How many?

The Witness: At that time we had six.

The Court: And one of those delivered?

The Witness: And one of the six delivered fish to us.

The Court: The others did not?

The Witness: The others did not. [1522]

The Court: All right.

Q. (By Mr. Schwartz): What happened to the other five?

A. Well, as I told you, the boats came in and were allowed to unload the loads that they brought in when they hadn't known the strike was in progress.

Q. Were they laid up or out fishing or selling elsewhere or what?

A. No, some of them continued to fish.

Q. Where did they sell their fish?

A. Some of them disposed of their fish to the other dealers.

Q. Now, then, as to the other 60 per cent of your business which is represented by purchases from boats other than yours, was there any diminution in that business?

(Testimony of George F. Naylor.)

A. Oh, yes. We received very little fish from those boats, practically nothing. At first they delivered us a little fish and then as the strike progressed they just dropped away one by one until I think at the last we didn't have any independent boats delivering fish—oh, yes, we had one.

The Court: You had one?

The Witness: Yes.

The Court: Who delivered all through the month?

The Witness: That is right. [1523]

Q. (By Mr. Schwartz): At the time that you were presented with a contract such as Government's Exhibit No. 3, which I have shown you, were you presented with a price list by the union?

A. I don't believe that at the time I was presented with that price list. I think that it was presented to me the day following or some such thing.

Mr. Schwartz: Will you mark this?

The Clerk: No. 36.

(The document referred to was marked Government's Exhibit No. 36 for identification.)

Q. (By Mr. Schwartz): I show you what has been marked for identification as Government's Exhibit 36 and ask you whether that is the price list which you received either from Mr. Phelps or Mr. McLauchlan.

A. Well, now, I won't say that I received this from either Mr. Phelps or Mr. McLauchlan because this was delivered to my market when I was out,

(Testimony of George F. Naylor.)

so I wouldn't definitely say that either Mr. Phelps or Mr. McLauchlan delivered this.

The Court: When was it left at your market?

The Witness: This was left at the market I think a day or two after the contract was presented to me.

The Court: A few days afterwards?

The Witness: Yes. [1524]

Mr. Schwartz: Will you mark this?

The Court: Does that have a number?

Mr. Schwartz: This one is No. 36 and we now offer it in evidence.

Mr. Margolis: Objected to on the ground of insufficient foundation, in addition to the other standing objection.

The Court: You just handed the Clerk another document.

The Clerk: No. 37.

(The document referred to was marked Government's Exhibit No. 37 for identification.)

* * *

The Court: No, I do not think there is sufficient foundation laid.

* * *

Mr. Margolis: I might suggest this, your Honor—this [1525] is probably not the appropriate time to make the request but it might be made and might save some time if you have an inclination to grant it—we are going to make a request for the production of the books in connection with the testimony

(Testimony of George F. Naylor.)

of this witness, and if he were to bring them with him it would save time.

The Court: No, there is certainly nothing in the record now which would warrant me to require this witness to produce his books.

Mr. Margolis: May I state what we have in mind? This witness has estimated that about 40 per cent of the fish which he purchases is from his own boats. We have reason to believe that——

Mr. Schwartz: Just a minute. I object to anything which they have reason to believe.

The Court: Yes, I think that is right. I think you had better just state your obligation without stating what you believe.

Mr. Margolis: I am not objecting, I say that we cannot cross-examine on this estimate without seeing at least that portion of the books which relate to his purchases of fish.

The Court: Well, counsel, the situation with this witness is that he is a fish dealer, he owns his own business, he is in a different position than if he were running some large corporation. I think a man running his own business [1526] can testify about what percentage he buys here or there, and so forth, without producing his books.

At the present state of the record your request is refused. [1527]

* * *

Mr. Garrett: Now Mr. Law, my accountant, who I was unable to locate, is in court. May I ask that the time for our inspection of the documents be-

(Testimony of George F. Naylor.)

hind the compilation of the Railway Express Agency, the Los Angeles and Washington Express and the West Coast Fast Freight, be extended to include Monday? Mr. Law may be able to finish tomorrow, but tomorrow is only half a day.

The Court: Yes. They may be extended to include Monday as far as Mr. Law is concerned, or as to the other defendants. [1533]

* * *

Mr. Schwartz: Your Honor, when we adjourned last Friday we had Mr. Naylor on the stand. We have a fisherman here whom I would like to put on at this time if it is all right with the Court.

The Court: You mean out of order?

Mr. Schwartz: Yes.

The Court: You may do so. [1537]

Mr. Margolis: No objection.

The Court: What is his name?

Mr. Schwartz: I. D. Anderson.

IRVAN D. ANDERSON

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Schwartz:

Q. Mr. Anderson, what is your business or occupation?

(Testimony of Irvan D. Anderson.)

A. Well, I work on a boat that collects bait for sport fishermen.

Q. Where? A. Out of Newport Harbor.

Q. How long has that been your occupation?

A. This is my third season.

Q. On what boat do you work? A. Cirio.

Q. Who owns the Cirio?

A. Ray Kimball. [1538]

* * *

Q. (By Mr. Schwartz): How are you compensated for your labor or efforts on the boat?

A. Share basis.

Q. Will you describe how that works?

A. Well, there is five of us, four including the captain, and then there is a net share.

The Court: Counsel, unless it is different from the others, why go into that? It is merely cumulative.

Mr. Schwartz: Very well.

Q. Is it the same as fishermen generally work on a share basis?

A. I think they do, to my knowledge.

Q. Are you a member of an organization which calls itself Local 36, IFAWA? A. No, sir.

Q. Were you ever requested to become a member of that union? A. Yes, sir.

Mr. Margolis: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Court: Objection overruled. The motion to strike is denied.

(Testimony of Irvan D. Anderson.)

Mr. Margolis: May we have a running objection, your Honor? [1539]

The Court: Yes.

Q. (By Mr. Schwartz): When were you so requested to join that organization, Mr. Anderson?

A. Well, I think it was last—very near during all of last summer, several different times.

Q. Who requested you to become a member of that organization?

A. Well, it was a fellow by the name of McLauchlan, as near as I know, Charlie McLauchlan.

Q. Do you see him here in the courtroom?

A. Yes, sir.

Q. Will you point him out?

A. Yes, sir. Sitting right down there.

Mr. Schwartz: May the record show that the witness indicated the defendant McLauchlan.

Q. Now will you state the circumstances under which that occurred?

A. Well, in the beginning of it I was working at the cannery before I started and they had—I don't know whether that come under the same head or not, and then I went on the fishing boat and they even used to meet us as we come in and tell us we ought to join the union. [1540]

Q. Who is they? A. Sir?

Q. You say they used to meet you?

A. Well, him would meet us, and then there was another fellow approached us, I don't know what his name was.

Q. All right. Go ahead. What was said?

(Testimony of Irvan D. Anderson.)

A. Well, they just asked us, told us we better join the union. We didn't think we should join, because we don't see why we should join a union when we fish live bait.

Q. What did he say?

A. He seemed to think we should join. I don't know for what reason that we should.

Q. Subsequently what happened, if anything, in regard to that.

A. Well, just repeatedly he would come down there and tell us we should join the union.

Q. Did you ever join? A. No, sir.

Q. Did you ever make any payments to Mr. McLauchlan or any other people connected with that organization? A. No, sir, I did not.

Q. Did anyone on your behalf make any payments? [1541]

* * *

Q. (By Mr. Schwartz): Did you ever pay any picket fees to members of the union, of Local 36?

A. Yes, sir.

Q. Will you state the occasion in that regard?

A. Well, our captain was sick in bed and we was just running as usual, and we went over there one day on a pay day, and he said there is so much held out for picket duty, and we couldn't figure out what would be the idea of us paying any picket duty when we wasn't in the union, and he said that is the way they was all doing, and he wanted to do it rather than have any trouble. So that is the

(Testimony of Irvan D. Anderson.)

way it was paid, and he paid it, and then it was taken out of our shares.

Q. How much was that share of yours?

A. I don't remember exactly, sir.

Q. Approximately?

A. I think it was a dollar or two a day for each share, and there was seven and a half shares.

Q. Were you given a clearance card?

A. Yes, sir. [1542]

Q. By whom?

A. I think they was given to the captain of the boat and he gave them to us.

Q. Do you have that card with you?

A. I don't know whether I have or not.

The Court: With you?

The Witness: I don't know whether I have or not.

Q. (By Mr. Schwartz): Will you see?

A. Yes, sir, I have.

Mr. Schwartz: Will you mark this, please?

The Clerk: 38.

(The document referred to was marked Government's Exhibit No. 38, for identification.)

Q. (By Mr. Schwartz): I show you what has been marked as Government's Exhibit 38, for identification, and ask you whether that is the clearance card you received. A. Yes, sir, this is it.

Mr. Schwartz: We offer it in evidence as Government's Exhibit 38, your Honor.

The Court: Admitted. [1543]

(Testimony of Irvan D. Anderson.)

Cross-Examination

By Mr. Andersen:

Q. How long have you been a fisherman, sir?

A. This is the third season.

Q. Have you always fished on the same boat?

A. Yes, sir.

Q. And for the same skipper?

A. Yes, sir.

Q. And with about the same size crew?

A. Yes, sir.

Q. And at the same place? A. Yes, sir.

Q. And are you familiar with the way the other boats operate, too?

A. Well, I think I am.

Q. Do they all operate on the same general basis; do they? A. Yes, sir.

Q. Just what do you do about the boats?

A. Well, I am just one of the crew.

Mr. Schwartz: Boats or boat?

Mr. Andersen: The boat.

The Witness: I am just one of the crew. I handle the net on the stern.

Q. (By Mr. Andersen): What else do you do aboard the [1544] vessel?

A. Whenever we make a set I have my share to do. There is four of us works the net.

Q. That is, you work with your hands, do you?

A. Yes, sir.

Q. There are five other members of the crew, aren't there? A. Yes, sir.

(Testimony of Irvan D. Anderson.)

Q. Do you ever do any work that you don't get paid for?

A. Well, I don't know how to explain that to you. We take care of our net, sir, that is just, you know, part of the line of duty.

Q. What do you mean part of the line of duty?

A. We have our net to tan and patch, but we don't get paid for it.

Q. Who paints the boat? A. We do.

Q. Do you get paid for that? A. Yes, sir.

Q. Who keeps the boat in seaworthy condition?

A. Ray Kimball.

Q. Do you assist in that work?

A. Yes, sir.

Q. How do you get paid for that, if you do?

A. Well, we do that during the winter months, and he just gives us \$5 a day for getting it ready to operate in the [1545] spring when the season comes on.

Q. As a matter of fact, during the fishing year you are either fishing or getting the boat ready to fish, aren't you?

A. Well, no, there is a period through the winter months that we don't have nothing to do.

Q. You are waiting for the fishing season to begin, is that correct?

A. We have been fishing now about two weeks, sir.

Q. I mean during this period, during the winter months. When you say you have nothing to do, during this time do you go down to the boat?

(Testimony of Irvan D. Anderson.)

A. No, sir, not unless they tell us we are going to have it on the ways or something.

Q. Unless there is some work to do about getting the hull ready, is that correct?

A. Yes, sir.

Q. So during that period of time during the winter months—how long is it, by the way?

A. It will run between two and a half to three months. [1546]

Q. During that time you were standing by waiting for the season to begin, is that correct?

A. Yes, sir.

Q. Now all of your work aboard the vessel, as I understand it, is work which we will call manual labor, is that correct?

A. Yes, sir.

Q. That is, it is laying out the nets, taking the nets in, handling the fish on board and brailing the fish out?

A. Yes, sir.

Q. Putting them in boxes, if you put them in boxes?

A. We have tanks on the boat. We just put them in live bait tanks.

Q. You have live bait?

A. Yes, sir.

Q. In other words, you put them in the tanks?

A. Yes, sir.

Q. And maintain them alive aboard the vessel and then you sell them to other boats in the harbor, is that correct?

A. That is right.

Q. Or to bait dealers on shore, is that correct?

A. Yes, sir.

Q. And the fish you usually sell to the bait deal-

(Testimony of Irvan D. Anderson.)

ers on shore, I assume that is a sort of a surplus that you haven't been able to sell to the other boats, is that correct? [1547]

A. Well, unless we bring them in to a receiver. When bait is hard to get we kind of have a receiver and we will put the bait in there so the boats will bait out there the next morning.

The Court: What do you mean, a receiver? That is a tank anchored out there?

The Witness: Yes, sir.

Q. (By Mr. Andersen): You occasionally bring fish that is sold to the market as fresh fish, don't you?

A. Well, we don't do very much of that. Once in a great while we get a chance to run out and get a few albacore, but if we do that that is extra outside of our bait.

Q. But you get paid on the same basis?

A. Yes, sir.

Q. In other words, your only method of compensation, generally speaking, throughout the year is a share, that is, a proportion of the proceeds of the sale of the fish, isn't that correct?

A. That is right.

Q. And you have no other means of income?

A. No, sir.

Q. All of your income therefore is derived from this fish industry, fishing for bait?

A. That is right. [1548]

Q. Do you ever catch any fish that you sell to the canneries?

(Testimony of Irvan D. Anderson.)

A. Not last year. The year before we hauled for one of the canneries, but last year we didn't have no canneries.

Q. That is, I assume, is when you have a sort of stroke of fisherman's luck where there is some fish running, is that correct?

A. Not as a rule. The bigger fish tear our nets up.

Q. You use this small half-inch net, I assume?

A. Yes, sir.

Q. Now with respect to joining the union, how many times did Mr. Lauchlan talk to you?

A. Several times.

Q. How long have you known Mr. McLauchlan?

A. Two or three years, I think.

Q. You are both neighbors there, are you?

A. Yes, sir; we are on speaking terms.

Q. But did you know each other before you were a fisherman? A. No, sir.

Q. You knew he represented the union, did you, or thought he did? A. Yes, sir.

Q. In your conversations, I assume they were always very friendly conversations? [1549]

A. Yes, sir.

Q. And what he tried to do was to convince you of the position of the union in relation to fishing and tried to convince you that you should join the union? A. That is right.

Q. And you used to discuss, we will say, your ideas as to whether you should join or whether you

(Testimony of Irvan D. Anderson.)

shouldn't join, and that is about the sum and substance of it, isn't that so?

A. Well, he would ask me and—well, all of us there, and we couldn't see where we could. That was the general conversation. He wanted us to join and we couldn't see it that way.

Q. And you never did join? A. No, sir.

Q. But I mean all of your relations with Mr. McLauchlan were very friendly, weren't they?

A. Yes, sir.

Q. As well as anyone else from the union who may have been with Mr. McLauchlan?

A. We figured that was his means of making a living the same as ours was fishing, so why should we have any downfall on him?

Q. You knew, of course, that Mr. McLauchlan was also a fisherman?

A. I didn't know that he was a fisherman; no, sir. [1550]

Q. Did you ever ask him? A. No, sir.

Q. Have you ever seen him fishing?

A. No, sir.

Q. Have you ever asked him if he was a fisherman? A. No, sir.

Q. By the way, how well do you know him?

A. Well, just through the conversations that he used to come down and ask us to join the union, is all.

Q. That is about the general limit of what you know about him?

(Testimony of Irvan D. Anderson.)

A. I just know him well enough to speak to him when I see him, that is all.

Mr. Andersen: That is all.

* * *

Mr. Schwartz: Your Honor, I have another special request to make. We have a truck driver who has just arrived and I would like to get him back to work.

Mr. Margolis: No objection.

The Court: Very well. [1551]

JAMES GASIO

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: James Gasio.

* * *

Direct Examination

By Mr. Schwartz:

Q. Mr. Gasio, what is your business or occupation?

A. Right now I am driving a truck for the Fortier Transportation Company.

Q. You are driving a truck? A. Yes, sir.

Q. For whom?

A. Fortier Transportation Company.

* * *

Q. How long have you been with them? [1552]

(Testimony of James Gasio.)

A. Since the 21st of November 1946.

Q. Whom did you work for prior to that time?

A. Los Angeles-Seattle Motor Express.

Q. Los Angeles-Seattle Motor Express?

A. That is right, sir.

Q. It is hard to hear you. Will you keep your voice up?

A. All right.

Q. Now prior to May 29, 1946, were you with the Los Angeles-Seattle Motor Express Company as a truck driver?

A. I was, sir.

Q. Will you state what your duties were?

A. I was delivering fish to the San Pedro wharf.

Q. Where would you pick up the deliveries?

A. It would come in from Seattle to our dock in Los Angeles.

Q. Where would you deliver the fish?

A. To San Pedro. I took care of all the fish that went down to San Pedro, down the harbor area, Long Beach, San Pedro.

Q. With reference to San Pedro, was it the fish dealers at the Municipal Wharf that you delivered fish to?

A. That is right.

Q. Did you deliver the fish to the dockside or the landward side of the wharf? Did you back up your truck to [1553] that wharf?

A. That is right.

Q. Now on or about May 29, 1946, did anything unusual occur with regard to your duties of deliveries of fish to San Pedro fish dealers?

A. To tell you the truth, I don't remember the exact date. That is, I never paid any particular

(Testimony of James Gasio.)

attention to it. But there was a day down there during that time that I was working for the Los Angeles-Seattle Motor Express that I went down there and they had a picket line up, and I didn't deliver my fish. I went in and seen the man the fish was consigned to and prior to that they told me not to cross the picket line.

The Court: Who told you that?

The Witness: Well, whoever was on picket duty there.

The Court: The pickets?

The Witness: The pickets, that is right.

I didn't know anything about that, and being I was in the union myself I wouldn't cross it. So I called Los Angeles, my dispatcher, and he told me that if I couldn't get rid of the fish there to take it over to the Union Ice in San Pedro and deliver the fish there if I couldn't make some other arrangements.

I talked with Standard Fisheries—that happened to be who the fish was for—and he couldn't accept the fish there at the dock, and he was going to——

Q. (By Mr. Schwartz): He was what?

A. He was going to have a truck follow me.

Q. Did you say he couldn't accept it?

A. He couldn't accept it. They wouldn't let me back the truck up to the dock. In fact, they wouldn't let me in to the wharf, as far as that goes. So I was going to take the truck out on the highway and going to transfer the fish from my truck to his truck

(Testimony of James Gasio.)

and he was going to bring it back in. I was told if that would take place that I would be followed.

Q. You were told by whom?

A. The pickets. If that was to take place, that they would have somebody follow us and destroy the fish, or knock it off the truck or something. What they was going to do, I do not know, but that is what they told me. So I called Los Angeles again and told Mr. Simpson how the things were, and what they had told me, and he told me to bring the fish back into Los Angeles, which I did.

Q. Do you recall who of the pickets it was that did the talking, or did they all talk?

A. Well, there was three fellows that talked to me mostly; one fellow took my name, I do not know his name.

Q. Would you recognize him if you saw him?

A. That I think I might. I wouldn't swear to it.

Q. Will you look around the court room and see if you see him?

A. I believe it is that gentleman right over there (indicating).

Mr. Schwartz: May the record indicate that defendant F. R. Smith was identified?

The Court: Yes.

Q. (By Mr. Schwartz): When you were told that you couldn't transfer your consignment from your truck to the Standard truck, who did the talking?

A. That gentleman there. He is the one that took my [1556] name, also.

(Testimony of James Gasio.)

Q. And you say there were two or three other people with you?

A. Yes. Well, all the pickets were standing around down there, wanted to know what I was going to do, so far as that goes. There were three of them that spoke.

Q. How did you recognize these people as pickets?

A. The way they were questioning me. There wasn't any other way. A few of them had signs, but as I remember these three I don't believe did, to tell you the truth.

Q. Did you see the picket line in progress there?

A. Well, just everybody was standing around down there. It was not exactly what I could say a picket line; I was told not to go up to the wharf, or anything like that.

Q. Where did you park your truck?

A. I was parked—I guess you call it the east end of the wharf, wouldn't you? Doesn't the wharf run east and west? Or north and south, which?

Q. I show you Government's Exhibit 1, and ask you if you can state from that picture where you parked?

A. I would be back this way, before you come into the wharf. You know where the restaurant—

Q. No.

A. Right down by the restaurant.

Mr. Schwartz: May the record show that the witness [1557] indicated, in answer to that question,

(Testimony of James Gasio.)

that the point at which he parked his truck was beyond the left border of the picture.

Q. (By Mr. Schwartz): Did you see any of those placards being carried around by the people whom you refer to as pickets?

A. Yes, sir, there was a few, I didn't pay particular attention to what they said or anything like that.

Q. Did it look to you like there was a strike going on? A. Yes, that's right.

Mr. Schwartz: You may cross-examine.

The Court: Mr. Garrett?

Cross-Examination

By Mr. Garrett:

* * *

Q. Where did you finally deliver this load of fish?

A. As I recall, I believe I delivered it to Freeman, Freeman Certified Foods.

The Court: In Los Angeles?

The Witness: In Los Angeles, that's right, sir.

Q. (By Mr. Garrett): On whose orders?

A. Well, I had the orders from Mr. Simpson. Where he got them, I do not know.

The Court: Simpson was your superior? [1558]

The Witness: That's right.

Q. (By Mr. Garrett): Was he dispatcher in Los Angeles?

A. He was our dispatcher, that's right.

Q. Had he first ordered you to deliver to Union Ice in Wilmington?

(Testimony of James Gasio.)

A. That is where he told me to take it if I couldn't get rid of it here, that is where we always store our fish for the fish dealers; they usually store their fish there, and we sometimes take it there for them, instead of delivering it to their wharf. If they have too much fish there we sometimes take it over to Union Ice for them and deliver it there.

Q. Who told you to deliver the load to Union Ice?

A. Mr. Simpson, he told me if I couldn't deliver it at the wharf to take it to Union Ice.

Q. But you didn't take it to Union Ice?

A. No.

Q. Why not?

A. Because I was told that they wouldn't accept it over there.

Q. Who by? A. (No response.)

Q. Did you go to Union Ice and did someone there—— A. No, I didn't.

Q. Tell us how you knew they wouldn't accept it there?

A. Well, the idea was that I didn't want to take the [1559] fish out of the wharf down there.

Q. I don't care about the idea. Just tell us who told you.

Mr. Schwartz: I submit that he is trying to answer the question.

The Court: Yes, I think he was.

The Witness: I was told the truck and the fish would be destroyed if I was to leave there.

Q. (By Mr. Garrett): All right. You answered that two or three times.

(Testimony of James Gasio.)

The Court: You are asking him on cross-examination. Let him answer the question.

Mr. Garrett: I am asking him who told him to take the fish to the Union Ice Company, and he is going through the same dissertation again. That isn't an answer to my question.

The Witness: Mr. Simpson.

The Court: He just answered Mr. Simpson told him to take it to the Union Ice Company. Now you want him to tell you who told him not to take it?

The Witness: I came to that conclusion myself. I was told the fish would be destroyed if I left there and I would be followed.

Q. (By Mr. Garrett): You say you were told by Mr. Simpson to take the fish to the Union Ice Company? A. That's right. [1560]

Q. Is that right? A. Yes.

Q. All right. You were told by Mr. Simpson to take the fish to the Union Ice Company; that was over the phone, wasn't it? A. Yes, sir.

Q. And that was soon after you had reached the fish wharf with these fish, was it?

A. That's right.

Q. And that was on a telephone call that you had made to Mr. Simpson in Los Angeles, is that right? A. That's right.

Q. And you made that telephone call to Mr. Simpson after talking with some persons you took to be pickets at the wharf, is that right?

A. That's right.

Q. Where did you call from?

(Testimony of James Gasio.)

A. I believe I called from Standard Fisheries.

Q. Is that one of the dealers on the dock?

A. It is.

Q. Do you know who the proprietor at that place is?

A. At the time I believe all I knew him by was Old John. I believe he sold out since then.

Q. Was Old John there at the time you made the phone call to Mr. Simpson? [1561]

A. He was. He was the man I was talking to.

Q. I beg your pardon?

A. He was the man I was talking to there.

Q. There in the office of the Standard Fisheries?

A. That's right.

Q. As a result of the conversation you had with him you made a phone call to Mr. Simpson in Los Angeles?

A. Yes.

Q. And Mr. Simpson was your dispatcher?

A. Yes.

Q. You initiated that phone call, that is, you called him, he didn't call you—is that right?

A. I called him.

Q. Was the fish you had on your truck for the Standard Fisheries, Old John's firm?

A. Yes.

Q. All of it?

A. Yes, all of it; fifteen boxes.

Q. All right. Have you signed any statement or writing for anybody about the testimony you would give about what happened on that day down at San Pedro that you talked about now?

(Testimony of James Gasio.)

A. Have I signed any paper to any statement that I might make on the stand, is that what you mean?

Q. No. About what happened there. [1562]

A. No, sir, I haven't signed any papers whatsoever.

Q. Have you given any statements that were reduced to writing about that?

A. I have not.

Q. Have you talked to anybody about that before you came here?

A. About the case?

Q. About what happened.

A. I told him exactly what happened (indicating).

Q. Who did you talk to first?

Mr. Schwartz: Wait a minute. Let the record show that the witness pointed to me at the moment.

The Court: Do you mean Mr. Schwartz?

The Witness: Yes.

Q. (By Mr. Garrett): Was it Mr. Schwartz you first talked to about your testimony about that day, or did you talk to someone else first?

A. He is the only man I talked to about the case, if that is what you are referring to.

Q. Did he take down what you said in writing?

A. No, he did not.

Q. Did he have anybody else take it down in writing?

A. There was nobody else in his office at the time but us two.

Q. How long ago was that? [1563]

(Testimony of James Gasio.)

A. One day last week, I believe it was either Thursday or Friday.

Q. One day last week either Thursday or Friday, that would be—are you sure it was either Thursday or Friday, are you?

A. I wouldn't swear to it now.

Q. What? Maybe Mr. Schwartz knows.

Mr. Schwartz: I believe it was either Wednesday, Thursday or Friday.

Q. (By Mr. Garrett): It was in the last few days of March, then, wasn't it? Did he get in touch with you or did you get in touch with him?

A. They got in touch with me, sir.

Q. Through whom?

A. They called me at the house and asked me to come down.

Q. Did you get a call? A. I did.

Q. Who from?

A. One of the girls up in the office, as far as I know. It was a girl who called. I don't know her I couldn't even tell you for sure who it was that called. They called from the Federal Building, I know that.

Q. I beg your pardon?

A. They called from the Federal Building here.

Q. And you got the call at home some day last week and came up here, is that right?

A. That's right.

Q. All right. Then you talked to Mr. Schwartz about the testimony you were to give here today, is that right?

(Testimony of James Gasio.)

A. He didn't tell me anything to say, if that is what you are referring to. He just asked me about the case.

Q. What did you talk about—the weather?

A. I beg your pardon?

Q. What did you talk about?

A. I told him exactly what I just said here in court.

Q. What, if anything else, did you talk about besides what you said here in court?

A. That's all.

Q. You don't recall saying anything to Mr. Schwartz that you haven't testified to here, is that right?

A. No, not pertaining to the case, if that is what you mean.

Q. What pertains to the case, that is for us to decide. What else did you talk to Mr. Schwartz about besides what you have testified here?

A. He asked me if it would be convenient for me to come down here, at what time, because the job I have I am on 24-hour call, and he was trying to arrange for me being down here at a time when he could get me right on the stand and get me out of here, that is all.

Q. Did you discuss any compensation for your attendance here? A. No.

Q. Did you discuss anything else there in that conversation that you haven't now already told us about? A. Not that I recall, no.

Q. All right. Now, let's go into the previous dis-

(Testimony of James Gasio.)

cussion. Who, if anyone, did you previously discuss your testimony here with? I am not talking about Mr. Schwartz; I am talking about before last week.

A. Do you mean just in a conversation who I talked it over with?

Q. That's right.

A. Mr. Simpson and Mr. Gano and I discussed it.

The Court: You mean you discussed the fact that you would testify or discussed what occurred.

The Witness: What had occurred down there, what happened. They wanted to know just exactly what took place down there. Why they wanted to know I don't know, but as far as them telling me what to say, or anything like that, there was nothing like that. [1566]

Q. Well, nobody is saying they told you what to say. Don't get nervous about it.

A. I am not getting nervous, but I think that is what you are driving at.

Q. Just tell us what was said. By the way, what happened——

Mr. Schwartz: Just a minute. I will object to that question.

The Court: Objection sustained.

Mr. Garrett: All right.

Q. It was Mr. Simpson and Mr. Gano. You are not working for Mr. Simpson any more, are you?

A. No, sir.

Q. You are working for the Fortier Transportation Company now, aren't you?

(Testimony of James Gasio.)

A. That is right.

Q. And Mr. Simpson is still dispatcher for the Los Angeles-Seattle Motor Express, I imagine, isn't he?

A. That is right. [1567]

* * *

Q. Who is Mr. Gano?

A. He is the Los Angeles-Seattle Motor Express agent here in Los Angeles. He is over Mr. Simpson. Manager of Los Angeles.

Q. Do you know Mr. Gano's first name?

A. I believe it is Robert.

Q. When did you have this conversation with them that relates to the same matter that you testified about here?

A. The day that I came down here, that I was called down here by Mr. Schwartz, out there in the hall.

Q. That was last week?

A. That is right.

Q. You weren't working for them at the time?

Mr. Schwartz: I object to that, if the Court please.

The Court: It has been asked and answered.

Q. (By Mr. Garrett): Where did that conversation take place?

Mr. Schwartz: He just stated that too.

The Court: He has answered that. He said out in the hallway.

Q. (By Mr. Garrett): It took place out in the hallway?

A. That is right.

(Testimony of James Gasio.)

Mr. Garrett: I hadn't heard that, your Honor.

The Court: He just got through saying it.

Mr. Garrett: All right.

Q. And you were under a subpoena, were you, to appear here at that time? A. I was not.

Q. You never were subpoenaed?

A. I was today.

Q. You were handed a subpoena after you were already here, is that right?

A. No. The subpoena was delivered to me last night.

Q. But you had talked with Mr. Schwartz before you were subpoenaed, is that right?

Mr. Schwartz: If the Court please, he has already stated all of this.

The Court: Objection sustained.

Mr. Garrett: All right. [1569]

Q. Now had you talked with Mr. Simpson or Mr. Gano about the matters you have related in your conversation or any of them prior to the day last week that you talked with them in the hallway here?

A. Yes, when I came back from the harbor they asked me what took place down there.

Q. That was the same day this occurrence that you have testified to took place?

A. That is right.

Q. Did you make any report at that time?

A. Not on paper, just verbal.

Q. Did anyone take it down. A. No.

Q. Were Mr. Simpson and Mr. Gano together at the time you made your report to them, or did you make your report to them at separate times?

(Testimony of James Gasio.)

A. You mean when I came back from the harbor?

Q. That is right.

A. Yes, they were together, all three of us.

Q. That was in the Los Angeles office of the Los Angeles-Seattle Motor Express?

A. Right in their office; that is right.

Q. Did you have your delivery record for the fish company with you at the time? A. I did.

Q. And that showed a delivery where?

A. It was originally slated for San Pedro, Standard Fisheries, San Pedro. I brought it back with me and we changed it to Freeman Certified Foods, and I delivered it on the same bill of lading to the Freeman Certified Foods.

Q. Had you already delivered it at the time you made this report to Mr. Gano and Mr. Simpson?

A. I had not.

Q. Was the delivery order changed at or after that conversation you had in their office?

A. After.

Q. After? A. Yes.

Q. Now your first instructions upon your conversation when you were with "Old John" for Mr. Simpson were to deliver your load, I think you said 15 boxes, to the Union Ice at Wilmington, is that correct? A. That is right.

Q. Did you make any effort to see whether the Union Ice would receive the 15 boxes?

A. Well, the way that took place down there, I called Bill; he told me if John couldn't take the fish

(Testimony of James Gasio.)

there to deliver it to Union Ice & Cold Storage.

Q. That was Simpson, was it?

A. That is right. And I hung up the phone and told [1571] John what Bill said. And he said that that wasn't a very good idea because he needed the fish and he wanted to get it.

So he told me to take the fish out from the wharf and he would have his truck follow me.

So I went back to the truck, got in the truck, and that is when this gentleman there came up to me, asked my name, I gave it to him, and he told me if I was to leave there and anybody was following me, or in any such way, anyway they were going to have a couple, three fellows follow me in a car to see that I didn't stop any place and try to get rid of that fish elsewhere than Los Angeles.

Q. Elsewhere than Los Angeles?

A. That is right.

* * *

Q. So that is why you didn't make any effort to deliver to Union Ice?

A. Yes, and I would like to finish a little bit there too.

Q. You have some more you want to put in here?

A. Yes.

After John and I talked this over, I went back to take out the truck, and I came back and told John what the pickets had said and I phoned Bill again.

Q. That is Simpson?

A. That is right. And I told him what the pickets had told me and he said for me to bring the fish

(Testimony of James Gasio.)

back to Los Angeles and he would make other arrangements by the time I got back to Los Angeles for me to deliver the fish some place else.

* * *

Q. Now I think you stated that at the time you came there to the fish dock you belonged to a union yourself, is that right? A. That is right.

Q. Was that the same union that was picketing there or some other union, if you know?

A. I do not know what the fishermen's local is. I belonged to Local 208 at the time.

The Court: 208 what?

The Witness: That is Teamsters; Truck Drivers and Produce Handlers, I believe it is.

* * *

Q. (By Mr. Garrett): After the report that you made to Mr. Simpson and Mr. Gano, did you make any other report concerning the same subject matter at any time after that and between that time and the time that you had your conversation with Mr. Schwartz which you have related here from the stand? A. I did not.

Q. Now did you tell anyone that you proposed to go out on the highway and deliver this fish into "Long John's" or "Old John's" truck?

A. Not that I recall; no.

Q. You can't recall having a conversation about that with anyone, is that correct?

A. About what time? You mean at the harbor?

Q. At the harbor.

A. At the harbor, no.

(Testimony of James Gasio.)

Q. Did you get any instructions from your office—— A. Just a moment.

Q. ——to deliver the fish into “Long John’s” truck at [1575] any place on the highway?

A. No, not from the office. That was strictly between John and I.

The Court: Just a minute. The witness a moment ago said wait a minute.

The Witness: That is right.

John and I did discuss that down there, being you asked me the question, he and I did that.

Q. (By Mr. Garrett): But you didn’t discuss that proposition with anyone except “Old John,” is that right? A. That is right.

Q. Did you agree with “Old John” to go out on the highway and deliver the fish into his truck on the highway?

A. I told him I would if we didn’t get into any trouble.

Q. And what did he say about that?

A. Well, it was his idea. I guess he must have had thought it was pretty good.

Q. Did he ever send his truck out any place on the highway?

A. He has occasionally; yes.

Q. That morning he had?

A. Not that morning, but at other times when we were going to San Diego with a load of fish, and we would have four or five boxes for him, we would call him from Los Angeles [1576] and he would have his truck meet us over on the highway some place

(Testimony of James Gasio.)

on 101 highway, and we would transfer his fish right there and we would go on to San Diego, just to save us an hour or an hour and a half.

Q. That had happened on occasions previous to this morning that you are testifying about?

A. Yes, it has happened before.

Q. That was common practice, was it?

A. Pardon me?

Q. That was a common practice, wasn't it?

A. Yes, if it would help us any in saving us time and get him his fish any quicker. We did it quite frequently whenever we could save any time.

Q. So instead of delivering the fish as the delivery order showed to the place there at the fish wharf where "Old John" had his place, the Standard Fish Company, the delivery instead would be made to his truck at some point on the highway?

A. That is right. And furthermore the bills of lading did not state any address. It said Standard Fisheries, San Pedro.

Q. And that was done at various times, was it?

A. It has been done before.

Q. In the year 1945 and the year 1946?

A. Yes. [1577]

Q. At the time this happened? A. Yes.

Q. And was it done after the time this happened on occasions? It was general practice, was it?

A. Well, not that I recall particularly with Standard, no, but it has been done with other fish companies.

(Testimony of James Gasio.)

Cross-Examination

By Mr. Margolis:

Q. Mr. Gasio, did you continue to work for the same company during the month of June, 1946?

A. I did.

Q. Did you have any occasion during June, 1946, to deliver any fish consigned to any of the fish dealers at San Pedro?

A. During what month?

Q. June, 1946? A. Yes.

Q. Where did you deliver?

A. Well, as I told you before, I delivered all the fish that went down to the harbor.

Q. Well, during the month of June 1946 did you deliver fish to the fish dealers at the harbor at San Pedro?

A. We didn't deliver any fish—I don't recall if they were still picketing in June or not.

Q. During that time?

A. During the picket we didn't deliver fish down there, if that is what you mean.

Q. Did you deliver any fish consigned to any of those dealers?

A. During the time of the strike?

Q. Yes. [1579] A. No.

Q. You didn't deliver any fish to the Union Ice Company?

A. During that time I don't believe I did; no.

Q. Were there other men in the company who were making deliveries of that kind besides yourself? A. That is right.

(Testimony of James Gasio.)

Q. You know, as a matter of fact, that others made deliveries to the Union Ice Company during that period, don't you?

A. To be truthful, no, I don't. [1580]

Q. You don't know whether they did or not?

A. That's right.

Q. Do you recall definitely that you did not make any deliveries to Union Ice Company during that period?

A. During June?

Q. Yes.

A. I don't recall definitely, because I didn't pay any attention to the days I deliver fish. I just deliver fish. It is an every-day occurrence with me. It is my work.

Q. So, for all you know you might have had quite a number of deliveries to Union Ice Company in June, 1946?

A. It could be, that's right.

Q. You don't remember having any trouble in making deliveries to Union Ice Company during June, 1946, do you?

A. Not that I recall. I didn't have any trouble down there at all.

Q. Before you come into the court room did anybody tell you where the defendants in this case were sitting?

A. You mean pointed them out by name and tell me where they were sitting?

Q. No. Did anybody tell you where the defendants were sitting, generally where they were sitting?

(Testimony of James Gasio.)

A. I never even knew they were in the court room, to be truthful with you.

Q. Mr. Gasio, was it just an accident that you looked [1581] directly over to where Mr. Smith was sitting?

A. No; I recognized him. I didn't look at him. I looked over there, and just as soon as I saw him I knew it was him.

Q. What caused you to look over there first of all?

A. I didn't look over there first. I think I started over in this part of the court room (indicating).

Q. You think you did. A. Yes.

The Court: Yes, the witness did, counsel. I saw him sitting here. As a matter of fact, he hesitated a little while at the counsel table.

Mr. Margolis: I was watching him very carefully at the time for that point, your Honor, and my recollection is, and my observation was that he looked over there first.

The Court: He looked around this way (indicating), and he hesitated a little bit, and then he saw Mr. Smith.

Mr. Margolis: How long after June, 1946, did you continue delivering fish to the fish dealers at San Pedro?

* * *

A. Up until the time I quit. I quit there and went to work for Fortier. I was off and on delivering fish or whatever came in.

Q. When was that that you quit? [1582]

(Testimony of James Gasio.)

A. November 21.

Q. Of 1946? A. That's right.

Q. Did you deliver fish to this fellow John? What is his last name, by the way?

A. I don't know.

Q. Did you deliver fish to him after June, 1946?

A. I believe I did, right in there sometime, soon after the strike, he sold his business to another fellow, the other fellow's first name is Frank, what his last name is I don't know either.

Q. You don't remember how long afterwards?

A. No, I don't recall exactly the day, no.

Q. Was it a month or two?

A. That I was delivering fish down there, you mean?

Q. That you were delivering fish to John.

A. Well, lots of times I go down to the harbor and don't even have any fish for him, as far as that goes. Just how many times I delivered to him after the strike I can't recall that. I probably delivered fish to him, yes, after the strike. I know I delivered it to Standard Fisheries, but John had sold out. It still carried the same name. I know that I delivered fish to Standard Fisheries after the strike, I know that. [1583]

* * *

Q. Do you know whether you made deliveries to the Union Ice Company for the Standard Fisheries after June, 1946?

A. I believe I can say that I didn't for Standard, not for Standard Fisheries, I don't believe I did

(Testimony of James Gasio.)

bring any fish to Union Ice for Standard Fisheries after that date.

Q. What is it that makes you—withdraw that. Why is it that you recall any particular things that makes you recall that you didn't deliver fish to the Union Ice Company for Standard Fisheries?

A. No, there is nothing particularly. I just don't believe I did. I know I was at Union Ice after that day, but to say it was for Standard, I wouldn't say I was there for Standard or——

Q. You wouldn't say whether you were there for Standard or not. A. That's right.

* * *

Q. (By Mr. Margolis): Let me see if I get you correctly. What is your testimony—is it that you did not deliver fish to Union Ice Company for Standard Fisheries, or that you do not remember whether you did after June, 1946.

Mr. Schwartz: I object on the ground it has been asked and answered, and it is immaterial.

Mr. Margolis: It has been asked and answered two different ways, your Honor.

The Court: Objection sustained.

Mr. Margolis: I wonder if we could have the last few questions and answers read back, your Honor?

The Court: You were talking laterally here about subsequent to June, 1946. At least I understood your questions that way. Did you? Whether or not you delivered fish to the Union Ice Company after June, 1946?

(Testimony of James Gasio.)

The Witness: I did.

The Court: That is what he is talking about.

Mr. Margolis: He has been talking about that for a number of questions.

The Court: That is what I understood your questions to relate to the witness.

Mr. Margolis: That's right. [1585]

The Court: And the previous questions were whether or not he delivered it during June.

Mr. Margolis: No.

The Court: You can have recourse to the record later. Let's get on with the examination of this witness.

Mr. Margolis: I can't have recourse after the witness has left the stand, when we have two inconsistent answers, according to my recollection.

The Court: The jury will have to draw the conclusion whether you have two inconsistent answers or not. We will proceed with the examination of this witness.

Mr. Margolis: I can't ask any further questions then. I wanted to follow this out, your Honor, and I would like to refer to the record, which I think will support me on that.

Mr. Schwartz: Your Honor, I base my objection to the question, further, on the ground it is immaterial.

The Court: It is immaterial.

Mr. Schwartz: And outside of the scope of the direct examination.

The Court: It is completely immaterial. The objection is sustained on that ground.

(Testimony of James Gasio.)

Mr. Margolis: I think making the objection for immateriality at this time, when, as I say, there are inconsistent answers in the record, is a bad time to make the objection. [1586]

Mr. Schwartz: I made the objection when the question was asked.

The Court: The jury will disregard counsel's remarks.

If you have any more questions of this witness, proceed.

Mr. Margolis: I have no further questions, your Honor.

Mr. Schwartz: I have just one further question.

Redirect Examination

By Mr. Schwartz: [1587]

* * *

GEORGE F. NAYLOR

recalled as a witness by and on behalf of the government, having been previously sworn, testified further as follows:

* * *

Direct Examination

(Resumed)

By Mr. Schwartz:

Q. I show you what has been marked Government's Exhibit 37, for identification, and ask you whether you received that letter at your place of business.

(Testimony of George F. Naylor.)

A. I did.

Q. Was the date you received it on or about the date appearing on Exhibit 37, for identification?

A. It was.

Mr. Schwartz: We offer in evidence Government's Exhibit No. 37, your Honor.

Mr. Andersen: We don't object to it on the ground of foundation or anything like that, but on the ground it is not a complete document, may it please the court.

Mr. Schwartz: We submit that the reference therein is [1589] not material to the issues in this case, nor to the completeness of that document.

The Court: If you have it——

Mr. Schwartz: I don't have it, your Honor.

The Court: Well, that is different.

Mr. Andersen: Your Honor, the letter shows, right in the lefthand corner of it, that there was another document attached to it.

Mr. Schwartz: I don't deny that. It refers to another situation, the San Pedro situation.

Mr. Andersen: How does he know that if he has never seen it?

Mr. Schwartz: The letter says so.

Mr. Margolis: Does Mr. Rubin say they don't have a copy of it?

Mr. Schwartz: I don't know whether he does or not. Your Honor, I am submitting that letter as it is. I am submitting the document as it is, and I am willing to argue and object to it on that point.

The Court: Let me finish reading it.

(Testimony of George F. Naylor.)

Mr. Andersen: If they were going to read that document, they would have to read the whole document.

Mr. Schwartz: That is the whole document, I submit.

The Court: This letter refers to another letter, and sooner or later the parties are entitled to have it, either [1590] now or in cross-examination, so do you have the letter?

Mr. Schwartz: Before going into that point, I would like to submit that this document as it is is complete. The reference to some other letter or anything else could be, and we say in this case is completely immaterial to the issues in this case, and to this particular witness' testimony, and this document. Supposing it referred to a bill in Congress?

The Court: Supposing it does?

Mr. Schwartz: I would say it has nothing to do with the issues in this cause.

The Court: That is up to me to decide. I can't decide it until I see it.

Mr. Schwartz: I submit the document is complete on its face, your Honor, that is my point.

The Court: No, it isn't.

Mr. Kenny: I submit counsel hasn't answered your Honor's question. You asked him if he had the letter, and he hasn't answered that yes or no.

The Court: Does the government have the letter?

Mr. Schwartz: I ask your Honor to read the first two paragraphs.

(Testimony of George F. Naylor.)

The Court: I read that to see if it was complete, and it isn't. Do you have the letter that that refers to?

Mr. Rubin: May I see the letter so I can determine whether we have, if your Honor please?

The Court: All right.

Mr. Rubin: I can't tell from reading this first paragraph whether we have the letter or not. I will be glad to state to the court that I will examine all the documents that we have upstairs in order to determine that. If counsel, after recess, have any ideas as to what this letter refers to, I will be glad to receive that information. It might expedite my search.

Mr. Kenny: We do. We will be very glad to help you on that, Mr. Rubin.

Mr. Rubin: Thank you.

The Court: All right. Let's proceed. The document will be marked for identification.

Mr. Schwartz: Yes, it has been marked.

The Court: What is that?

Mr. Schwartz: 37.

The Court: That was marked for identification the other day.

Q. (By Mr. Schwartz): Mr. Naylor, I believe last Friday I asked you some questions concerning boats that you obtained fish from for your business, is that correct? A. Yes, you did.

Q. With regard to the boats, five or six——

A. There were six at that time.

Q. Do you have any control over when those boats go [1592] fishing or where?

(Testimony of George F. Naylor.)

A. No; the boats go fishing at their captain's will, wherever he wants to go.

Q. Do those boats or do the captains of those boats have to sell their fish to you?

A. Well, it is understood that they will sell them to me providing they are in that locality. If they are outside of that locality it is not obligatory that they do.

Q. If they are inside the Newport locality do they have to sell it to you? A. Yes.

Q. As to the independent boats from whom you purchase fish, do those people fish under your control? A. No.

Q. Do they have to sell fish to you?

A. No.

Q. Is there any employer-employee relationship whatsoever between you and those independent boats? A. No.

Mr. Margolis: I object on the ground that that calls for the opinion and conclusion of the witness, your Honor, what kind of relationship there is.

The Court: I think it does. The objection is overruled. I think it is a popular and common understanding. If it wasn't I don't know how anyone could conduct a business if they had to go to a lawyer every time to find out if a person was an employee.

Q. (By Mr. Schwartz): What is your answer, Mr. Naylor? A. No.

* * *

Mr. Margolis: One other matter, your Honor.

(Testimony of George F. Naylor.)

With regard to the examination of records by Mr. Fuss, it has all worked out very well except for the American Railway Express. He [1595] presented himself at the office of the American Railway Express and was not allowed to look at the records and was told that he would not be allowed to look at the records in the absence of a written order from this court. I have never run into a situation of this kind before. I know of no written order that this Court could issue except to subpoena the records in.

We of course don't want to put the American Railway Express to the difficulty of bringing those boxes and boxes of record in, but if that is the only way of our getting access to them, I am afraid we will have to do that, and I was wondering whether there might be some shortcut outside of a subpoena duces tecum which could be utilized so that we could see the records at their place, because I know of no form of order which your Honor could make which would authorize Mr. Fuss to look at them.

The Court: The witness was here. I do not know whether he was the one who had immediate charge of those records or not. He was not excused permanently, as I remember.

Mr. Dixon: That is right.

The Court: He was only excused to be recalled for further examination after the records were examined. We can recall the witness and I can order him to make the records available or to produce them.

(Testimony of George F. Naylor.)

Mr. Margolis: One of the two. [1596]

The Court: I have that power, without a subpoena.

Mr. Margolis: Then we will request——

The Court: However, it probably would be better to have a subpoena duces tecum prepared, and then the records that you want to see would be specifically identified. As I remember, they were pretty well identified anyhow as to the particular records.

Mr. Margolis: I think they were identified, and we will prepare it if necessary, but, frankly, we don't want him to bring those records into court.

Mr. Schwartz: Was that brought to our attention?

Mr. Margolis: No.

Mr. Schwartz: When did this happen?

Mr. Margolis: I am not saying the Government had anything to do with it.

Mr. Rubin: We didn't even know about it.

Mr. Margolis: That is right.

Mr. Schwartz: When did it happen?

Mr. Margolis: I believe either Thursday or Friday of last week.

Mr. Rubin: Maybe we can handle it informally.

The Court: Perhaps during the noon recess you can straighten it out, otherwise he will be brought back here.

Mr. Schwartz: I think we can straighten that out, your Honor. [1597]

(Testimony of George F. Naylor.)

(The jury returned to the courtroom at 11:40 o'clock a.m.)

* * *

Q. (By Mr. Schwartz): Mr. Naylor, on or about June 29 did it come to your attention that the picket lines had been removed from the fish dealers at San Pedro? A. Yes, sir, it did.

Q. On or about that time did you receive a visit at your establishment from any of the members of an organization which calls itself Local 36?

A. Yes, sir.

Q. At your place of business? A. Yes, sir.

Q. Who were those people?

A. They were Bob Phelps and Mr. Lackyard, I believe.

Q. Do you see them in court? A. Yes.

Q. Will you point them out?

A. This is Bob Phelps, and Mr. Lackyard is back there. [1599]

Mr. Schwartz: May the record show that the witness identified the two named defendants?

The Court: So ordered.

Q. (By Mr. Schwartz): Now what took place on that occasion?

A. Well, they presented me with that letter that you have there.

Q. Referring to Exhibit 37 for identification?

A. That is right.

Q. Was there any conversation at the time?

A. Yes, there was. They explained to me that the dealers in San Pedro had been presented with

(Testimony of George F. Naylor.)

an agreement, I believe it was, or the dealers had written a letter to the union stipulating certain things that they—I believe that the union would have a representative on the wharf at San Pedro, that he would establish prices, and that the markets would agree by those prices and pay for them. He said they had all signed those and asked me if I would do likewise, at which time I told them that I would have to talk to my attorney about it and act on his recommendation, which I did, and he advised me strictly not to sign any agreement of that sort.

The agreement was entirely satisfactory with the exception of agreeing to prices and agreeing to boycott the fishermen that didn't belong to the union. He advised me that such was the case, that that is what it would amount to. [1600]

Q. Did you have another conversation with Phelps or any of the other people you have named after that first meeting at your place that you just talked about? A. After that meeting, no.

Q. Did you advise Mr. Phelps or any of the people with whom he is associated that you would or would not enter into this agreement?

A. Yes, I did.

Q. How did you advise them to that effect?

A. Wait a minute. I am wrong on that when I said I did not have another meeting with them. They came back to see me and I advised them at that time. Mr. Phelps called——

Q. When was that?

(Testimony of George F. Naylor.)

A. I believe the same afternoon.

Q. What took place on that afternoon?

A. That was all there was to it. They said they were sorry they would have to continue with the picket line.

Q. What did you tell them?

A. I told them that I couldn't give them a letter to the effect that I would agree not to buy any fish from any one union fisherman and that I couldn't agree to any fixing of prices or any stipulated prices.

Q. Now prior to your meetings, these two meetings, had you had any telephone conversations with any members of this organization which calls itself Local 36? [1601]

A. Yes, on the morning that I heard the picket line had been removed at San Pedro I called Mr. Zafran on the phone.

Q. Do you know Mr. Zafran?

A. Yes, I do.

Q. Do you see him in court?

A. Yes, I do. He is back there in the first row, next to Art Hill.

Mr. Schwartz: May the record show that the witness identified the defendant Zafran, your Honor?

The Court: So ordered.

Q. (By Mr. Schwartz): What was this conversation that you had with Mr. Zafran?

A. I called Mr. Zafran and told him, I understood the picket line had been removed from the

(Testimony of George F. Naylor.)

markets in San Pedro, and asked him when they were going to remove the picket line at Newport Beach. He told me that that was entirely up to the boys in Newport Beach that were in charge of the local union down there, and that it was up to their discretion whether the picket line would be removed or not.

And I said, "Well, I understand from what Bob Phelps and the other boys have told me, that the San Pedro dealers had signed an agreement, or given them a letter to the effect that they would abide by the terms of this agreement, but that I had [1602] checked with the dealers in San Pedro by phone and found out that such wasn't the case, and that I didn't see any reason for them to continue the picket line at my place in Newport Beach when they had already removed the picket lines at San Pedro."

He said, "Well, it is entirely up to the boys in Newport Beach."

And I said, "Why don't they take the picket line off?"

Then he said, "Well, maybe it is because they don't trust you."

And that was, as I remember, the way the conversation ended.

Q. Now you mentioned Mr. Lackyard and Mr. Phelps as having visited you. Were there any other people with them?

A. Well, those are the ones that I particularly

(Testimony of George F. Naylor.)

remember. I believe there was someone else with them but I don't just recall who it was.

Q. Now how soon after this conversation, or these two conversations on the same date at your place of business, was the picket line removed from your establishment?

A. I believe it was the following day or perhaps the day after that. I am not real sure about that. Within a very short time.

Q. Did you sign any agreement with them?

A. No. [1603]

Q. Of any kind? A. No.

Q. And after the pickets were removed from your establishment, did you proceed to conduct your business in the usual course as you had prior to the picket line being placed there?

A. I did.

Mr. Schwartz: You may cross-examine.

The Court: Pardon me. Before we commence the cross-examination, I suppose you will want to know the disposition of this letter which was offered and which I have not yet ruled on, Exhibit 37?

* * *

Mr. Schwartz: I might state to the Court at this time that I am not going to offer Exhibit 37 except as it was offered, without an offer of additional document to which this [1604] Exhibit 37 refers. I am going to stay with my offer on that point, your Honor.

The Court: I do not think it is admissible, coun-

(Testimony of George F. Naylor.)

sel. If you offer part of the document they are entitled to have the whole document. I cannot tell whether the other document is material or immaterial until I see it. [1605]

* * *

Cross-Examination

By Mr. Margolis:

Q. As I understand it, Mr. Naylor, you have a wholesale fish business located in Newport Beach, is that right? A. That's right.

Q. Whereabouts in Newport Beach is that place located?

A. It is located at 2800 Lafayette, Newport Beach.

Q. Is that on the water front?

A. That is on the water front.

Q. Are there any other fish dealers' places adjoining yours or in the immediate vicinity? [1607]

A. Yes, there are.

Q. And what other places are there?

A. There is John Harmon's place that is located about two blocks from where I am.

Q. Is that the name? When you say "John Harmon's place," is that the name of the place?

A. John Harmon's fish company, I believe it is. I believe all he has over his door is just "John Harmon."

Q. He is also a wholesale fish dealer?

A. Yes; and one block north on Lafayette from me is located a building that at one time was occu-

(Testimony of George F. Naylor.)

pied by Larry Fisher. He was a wholesale fish dealer.

Q. Was he the man that represented Paladini?

A. He was the man—I don't know whether he represented Paladini or not. Ostensibly he was in business for himself.

Q. Paladini is a wholesale fish dealer in Los Angeles, is it not? A. That's right.

Q. Is that place still there? Is Larry Fisher there?

A. The building is still there, but Larry Fisher is gone.

Q. Is there somebody else doing business there?

A. There is nobody at the present time doing business there. Across the street from them is the Western Cannery [1508] that buy fish wholesale.

Q. For cannery purposes?

A. For fresh fish purposes.

Q. For fresh fish purposes? A. Yes.

The Court: And cannery?

The Witness: They have a cannery, but the cannery is at a separate location. And in the same building that is occupied by the Western Cannery is the Commercial Fishermen's Cooperative Association.

Q. (By Mr. Margolis): Going back to Western Cannery for a moment, at the location you have described, Western Cannery is engaged solely in the fresh fish wholesale business, is that right?

A. No; they are engaged both in canning and in the——

(Testimony of George F. Naylor.)

The Court: At that location?

The Witness: Not at that location, no. Only in the fresh fish business.

The Court: That is his question.

The Witness: Only in the fresh fish business at that location. And they also operate an oil dock at that place.

Q. (By Mr. Margolis): They are very versatile, aren't they? A. I would say so.

Q. Then there is the Fishermen's Cooperative right [1609] in the same building as Western Cannery, is that right?

A. That's right. I believe they rent from the Western Cannery.

Q. And they also buy fresh fish, is that right?

A. That's right.

Q. Any others?

A. I believe that that is all of the wholesale fresh fish dealers in Newport Beach.

Q. In addition to the establishment which you have in Newport Beach, do you have a branch in Los Angeles?

A. I had a branch in Los Angeles. I have disposed of it. I no longer have it.

Q. When did you dispose of it?

A. October.

Q. 1946, is that right? A. That's right.

Q. How long did you have it prior to October, 1946?

A. Well, I had it since the fall of 1937.

(Testimony of George F. Naylor.)

Q. And where was that branch located during that period?

A. At 1240 East Sixth Street, Los Angeles.

Q. And that was also engaged in the wholesale fish business? A. That's right.

Q. Did that establishment buy fish independently—I will withdraw that. Did you purchase fish at that establishment, as well as at the establishment at Newport Beach? [1610] A. Yes.

Q. From what sources did you purchase fish at the Los Angeles establishment?

A. Los Angeles establishment——

Mr. Schwartz: I object to the question on the ground it is not material to the issues in this case, and outside of the scope of the direct examination.

The Court: I fail to see the materiality of it. If it is preliminary—I can't even see how it would become material.

Mr. Margolis: I submit, if your Honor please, it is part of the same business, it is a branch of the same business, and I think it is material, having gone into part of the business we have the right to go into that part which was not covered.

The Court: If it is material with the other business, you can go into it.

Mr. Margolis: Yes. I think what fish was received by it during——

The Court: I will overrule the objection at this time. If the materiality isn't made to appear, why——

Mr. Margolis: It will be subject to a motion to strike?

(Testimony of George F. Naylor.)

The Court: Yes, submit to a motion to strike.

Mr. Margolis: Do you want the question read?

The Witness: I believe you better. [1611]

* * *

The Witness: The Los Angeles establishment purchased fish from Seattle—from Washington, Oregon and Northern California points; also from the East Coast, the matter of our oysters; and shrimp out of Lower California; the usual sources of supply for a fish market.

Q. (By Mr. Margolis): Did you obtain any fish from the Southern California area?

A. Perhaps there was a small amount of local fish bought in Southern California outside of the fish that we sent them from Newport Beach.

Q. Some of the fish that you purchased at Newport Beach would be sent to your branch in Los Angeles? A. That is correct.

Q. In addition they might buy a small amount directly, is that right? A. Yes.

Q. Where would you buy that? From the fishermen in San Pedro?

A. No; they would buy that fish from dealers in San Pedro or San Diego, or Newport Beach, or wherever they would happen to have a supply.

Q. In addition to operating as a wholesaler, and during the period mentioned as a wholesaler, in Newport Beach, and during the period mentioned having a branch in Los Angeles, did you also act as broker for fishermen selling shark livers?

A. That is correct.

(Testimony of George F. Naylor.)

Q. How long have you been doing that?

A. Ever since—let's see. I will be more specific than that. For the past three years.

The Court: They sell all kinds of livers, don't they?

The Witness: That's right, fish livers.

Q. (By Mr. Margolis): In addition to shark.

The Court: It isn't just shark livers?

The Witness: No.

Q. (By Mr. Margolis): The main item is shark livers? A. That is true.

The Court: That is because the livers are the biggest?

The Witness: And the most valuable.

Q. (By Mr. Margolis): They have a lot of vitamins?

The Witness: That is true.

Q. Do you also operate a retail business?

A. At that time we didn't, no.

Q. At that time you didn't? A. No, sir.

Q. And now you do, is that right? [1613]

A. Yes.

Mr. Schwartz: At what time?

The Witness: At the time of the trouble with the union, at the time we had our picket lines. I presume that is what you are referring to.

The Court: When did you begin your retail business?

The Witness: In the fall of '46.

Q. (By Mr. Margolis): Is that the first time you had owned a retail business? A. Yes.

(Testimony of George F. Naylor.)

Q. Where is that located?

A. Same location at Newport Beach.

Q. In addition to that, do you operate and maintain facilities for repairing and fixing nets?

A. Yes, our own nets.

Q. I beg your pardon?

A. Our own nets.

Q. You don't repair and fix anyone else's nets?

A. No.

Q. How long have you maintained those facilities?

A. For approximately four years.

Q. The fishermen who work on the boats owned by you use these facilities for the purpose of repairing nets, is that right?

A. That is correct. [1614]

Q. Where are they located?

A. They are located right across the street from our principal place of business at Newport Beach.

Q. From the wholesale place?

A. That's right.

Q. You own a number of boats, do you not?

A. Yes.

* * *

Q. (By Mr. Margolis): Will you tell us what boats you owned during the year 1946, stating with regard to each boat its approximate size.

A. I own the Cabrillo. She is a 32-foot boat.

The Court: And the crew?

The Witness: Last year I believe she only had one in the crew.

The Court: That is the fellow who ran it and one man? [1615]

(Testimony of George F. Naylor.)

The Witness: No; just the man who ran it.

Q. (By Mr. Margolis): Sometimes more than one?

A. Sometimes there are more than one, yes.

Q. What is the maximum?

A. Two. Then there is the Prosperity. She is a small boat. I think it is about 24 feet long. And there is only one man on that boat.

Q. At all times? A. At all times.

Q. All right.

A. Then there is the Tropic Bird, and she has operated with as few as one man in the crew, the skipper, the fellow that operates the boat, and with as many as five.

Q. How big a boat is that?

A. It is 38 feet. I have the Standard. She is a 48-foot boat that has a crew varying from two men to seven men. Then I have the Skylark, which is a 51-foot boat, and she operates with a crew from five to seven men. Then at that time I owned the Pioneer—rather, owned an interest in the Pioneer. She was a 51-foot boat and operated with a crew of never less than four and as many as eight men. I think that is six, isn't it? [1616]

* * *

Q. (By Mr. Margolis): These facilities that you maintain the purpose of repairing and fixing nets, there are certain persons who perform labor there, who do work there, isn't that so?

A. Yes.

Q. And that work consists of repairing and fixing nets, is that right? A. That's right.

(Testimony of George F. Naylor.)

Q. Does it also consist of making new nets?

A. Sometimes.

Q. All right. Now, there are certain persons who perform that work with your facilities from time to time, is that right? A. Yes.

Q. Is that work carried on continuously?

A. It was at that time, yes.

Q. It was at that time?

A. At the time, yes.

Q. Are these people who do work for you the same people who fish on the boats or from the boats which you own?

A. No; at that time we had a net man that did nothing but make nets and repair nets and keep them in condition.

Q. Was he a fisherman? [1623]

A. He had been a fisherman, but he was on our pay roll, he was our employee.

Q. Working on a daily basis, a salary basis?

A. Working on a salary basis.

Q. I see. At other times the facilities are used, are they not, by the men who fish from your boats, isn't that right?

A. And from all the other boats that fish around there, too.

Q. They come in and use those facilities?

A. Yes, we extend that courtesy to them. We allow them the privilege of using the racks that the nets are put on.

Q. When the fishermen working on your boats repair nets, are they paid by you?

(Testimony of George F. Naylor.)

A. No; that is part of their job. Their job is to fish and to keep the gear in a state of repair. Any new gear that we put out, we make the gear and we pay for the net man to make that gear.

Q. When you referred a moment ago in one of your answers to "at the time"—

A. I mean at the time you are referring to; the time of this trouble we had.

Q. In May and June, in that period, in 1946?

A. Yes.

Q. You had somebody on your pay roll at that time making [1624] nets? A. That's right.

* * *

Q. (By Mr. Margolis): At the conclusion of this morning's session I believe you had just testified that you could not estimate the amount either in dollars or pounds of fish which you obtained from your own boats during the year 1946, is that right?

A. That's true.

Q. Is it possible for you to estimate the total amount of fish which you obtained from all fishermen at Newport Beach during that year?

A. Well, I know how much fish we buy, and I know how many boats we have working for us, and which boats are independents and which boats are our own, so I have estimated from that. [1626]

Q. During the year 1946, approximately how much fish did you buy all together from fishermen at Newport Beach, including your own boats and all other boats? A. In 1946?

Q. Yes.

* * *

(Testimony of George F. Naylor.)

A. I would be unable to give you the amount in pounds, but I can say that approximately we handled—well, let's see, I better tell you our sales were approximately \$175,000 in 1946 and our purchases were approximately 80 per cent of that amount.

Q. (By Mr. Margolis): Did your purchases include purchases from sources other than fishermen at Newport Beach?

A. I mean from the fishermen at Newport Beach. And our sales are for fish produced there.

Q. Would you say, then, you purchased approximately \$140,000 worth of fish?

A. I said we purchased approximately 80 per cent of \$175,000. If that is \$140,000, yes, that is it.

Q. Approximately \$140,000. Approximately 40 per cent of that was obtained from the boats which you owned, is that correct?

A. That's right. [1627]

Q. About sixty-five or seventy thousand dollars worth, about sixty-five thousand dollars worth was obtained from these six boats which you owned at that time?

A. Approximately.

Q. Are all of these boats used—and by “these boats” I am referring to the boats which you owned—used by the fishermen under the same terms and conditions, or do the terms and conditions for each boat's use vary?

A. The terms and conditions are virtually the same. On small boats we take, where there is only one man operating the boat, we take a third on a small boat; where there is more than one man on

(Testimony of George F. Naylor.)

a boat, the boat takes a share, the captain of the boat gets either a share and a half or a share and ten per cent of the boat share; and the gear, the nets, only nets aboard, get a share. [1628]

Q. And each individual fisherman gets a share?

A. And each individual fisherman gets a share.

Q. Is there any written agreement signed in connection with the utilization of the boat by the fishermen?

A. No, we have only an oral agreement.

Q. Does that oral agreement run for any specific period?

A. As long as they are on the boat.

Q. You let the fishermen have one of your boats, and they keep it indefinitely as long as they want to?

A. Yes.

Q. In other words, you have no right or power to say to them, "I want my boat back?"

A. Oh, yes, if I wanted the boat back, in case I sold it or wanted to do anything else with it, I could do that. I could tell them I want the boat back.

Q. Actually at any given time you can tell these fishermen, "You are through, as far as the use of my boat is concerned," isn't that right?

A. That is right.

Q. How about maintenance of a boat, do you maintain the boat or do the fishermen who use the boat maintain the boat?

A. I maintain the boat.

(Testimony of George F. Naylor.)

Q. Do the fishermen do any kind of maintenance work in connection with the boat? [1629]

A. No, sir.

Q. You do all of the maintenance work?

A. That is right.

Q. What does that consist of?

A. That consists of keeping the boat in repair, and painting it, and any overhauling of the engine that is necessary.

Q. I assume that you use the money which you get as your share of the boat for that purpose?

A. That is correct.

Q. Is that money which you receive from the boat adequate or more than adequate to take care of maintenance?

A. Well, it hasn't proven adequate.

Q. As a matter of fact, you operate these boats at a loss, is that right?

A. I wouldn't say that I operate all of my boats at a loss, but I do say that in general they are not profitable.

Q. In general, you operate them at a loss, is that correct?

A. Not necessarily at a loss, but for the investment that you have in them they are not profitable. There is quite a difference.

Q. The reason that you operate those boats is so that if you want a particular species of fish at any given time you will be in a better position to get it than a fish dealer [1630] who doesn't own boats, isn't that right?

(Testimony of George F. Naylor.)

A. That is not the reason that I have them. I have those boats because five years ago the fishermen of Newport Beach organized a swordfishermen's association, and they contracted with a dealer to give him all of the swordfish that was produced from that association, and, by the way, that association extended from Santa Barbara to San Diego, and they created an absolute monopoly on swordfish. We were unable to get any swordfish. Swordfish is a necessary item in my business, so I bought some boats to get some swordfish. The only reason I have any boats is because of that, and I am going to get rid of them as soon as I can because I don't want them any more.

Q. Because you don't make any money on them?

A. Because they are an unnecessary headache to me and I can take the money and put it to a more profitable use some place else.

Q. Did you obtain just swordfish from these boats?

A. Naturally not. They caught all kinds of fish for me, but my object in having them was to get swordfish.

Q. What percentage of the fish which they caught was swordfish?

A. Oh, heavens, that is difficult to say, what percentage of them are swordfish. I don't keep percentages on the varieties of fish that I buy.

Q. You don't know approximately? Was it half or a third?

A. Oh, heavens, no. You see, the swordfish sea-

(Testimony of George F. Naylor.)

son is limited to but a few months of the year and they fish for other varieties of fish for the balance of the year.

Q. They also fish for other varieties of fish during the season of the swordfish too, don't they?

A. They catch albacore and swordfish.

Q. As a matter of fact, swordfish is a very tiny per cent of the total fish that you buy?

A. That is true, they are a small percentage of what we buy.

Q. Maybe 5 per cent or less?

A. I would hesitate to make any estimate of what the percentage is.

* * *

Q. Now in addition to owning boats do you charter and operate boats?

A. No, we don't.

Q. Did you do that in 1946?

A. No. We operated some boats—one boat, for the owner, the boat *Reliance*. It was owned by a Mr. Sherwood. [1632] He was in Fresno or some place else and he had a boat down here and he came down and made an arrangement with us to operate the boat for him, which we did. We had a power of attorney from him and operated that boat.

Q. When was that?

A. That began in 1945, along in the fall, I think about September of 1945, and continued through June I think of 1946.

(Testimony of George F. Naylor.)

Q. What do you mean when you say that you operated the boat?

A. Well, we were in charge of the boat. We selected a crew and put them on the boat and they fished and sold their fish and we handled the collection of the boat's share and paid the expenses on the boat, and did all of that.

Q. You also operate the boats you own?

A. Yes.

Q. Isn't it a fact that you also chartered a boat from the South Coast Shipyard?

A. No, that is not a fact. I didn't charter a boat from the South Coast. Charlie worked on the boat that he has reference to, but I didn't charter it from them. I had an option to buy the boat.

* * *

Q. Did you buy it? [1633]

A. No, I didn't buy it.

Q. You mean you got possession of the boat?

A. Absolutely.

Q. Under an option?

A. Yes, and power of attorney from the South Coast to operate that boat.

* * *

Q. How long did you have that power of attorney?

A. I had the boat for approximately a year beginning sometime in '45 and ending sometime in '46.

Q. And during all of that period you had it under an option to buy?

A. That is right.

(Testimony of George F. Naylor.)

Q. You operated it just the same as the way you operate your own boats, is that right?

A. That is right.

Q. Now during 1946 you were operating two boats which you did not own, is that right?

A. That is correct.

Q. What percentage of the fish which you bought did you obtain from those two boats which you operated but did not own?

A. Very small percentage.

Q. Can you estimate it? [1634]

A. Well, I will tell you. In the first place, the Reliance fished bait for the sports fishing fleet. That was their principal occupation. The fish that I got from them was negligible. They might have occasionally gotten a little market fish, or I might occasionally buy some sardines or anchovies from them, but it was in a very limited quantity.

Now that boat that I had of the South Coast that I operated, Charlie will tell you from the time he was on there they never made any money, they didn't catch any fish, they couldn't catch any fish.

Q. Was that true for the entire year that you operated it?

A. Yes, that was true for the entire year.

The Court: What do you mean, they couldn't catch any fish?

The Witness: They just didn't know how.

Q. (By Mr. Margolis): You mean the fishermen who were on there didn't?

(Testimony of George F. Naylor.)

A. That is right. The fishermen on the boat couldn't catch fish. The other boats clicked, but they couldn't.

Q. They couldn't catch any at all?

A. They caught quite a few, but so little it was negligible.

Q. Did they sell those fish to you?

A. I think that they sold those fish to us [1635] possibly they might have sold some in Santa Barbara, I don't know.

Q. They might have done some fishing around Santa Barbara?

A. That is right.

Q. But when they fished in Newport Beach and caught fish they sold it to you?

A. That is right.

Q. In addition to that, do you finance boats?

A. Yes, I have done some of that in the past.

Q. During the year 1946 were you financing any boats?

A. Yes; one.

Q. What boat was that?

A. The boat Two Waves.

Q. On whose behalf were you financing it?

A. A fellow named Lloyd Gabriel.

Q. Did he fish around Newport Beach?

A. Yes, he fished Newport Beach and Catalina and San Diego.

Q. What percentage of his time did he fish around Newport Beach?

A. Not very much of his time. He did most of his fishing in Catalina and San Diego, I think.

Q. Did he sell the fish *that caught* to you?

(Testimony of George F. Naylor.)

A. That part that he delivered to Newport Beach he did--no, I will take that back, he didn't even deliver all of [1636] those. Yes, he did, on the Two Waves. He did deliver the fish on the Two Waves that he brought into Newport Beach to me.

Q. The fish caught at Catalina sometimes go to Newport Beach, do they not?

A. Yes, but when he fished out there he delivered to the barges, the French Sardine and Van Camp's barges and other barges for the canneries.

Q. But the market fish he caught out there he brought in to you?

A. That is correct.

Q. Do you also finance gear?

A. In some instances I have.

Q. Were you financing gear in 1946?

A. No.

Q. Not at all? A. Not in 1946; no.

Q. Prior to that time?

A. Prior to that time I had. [1637]

* * *

Q. Do you own nets in addition to those nets which are used on your boats?

A. Yes, I do.

Q. Do you make arrangements for the use of those nets by other fishermen? A. I do.

Q. On a share basis?

A. That is correct.

Q. With how many boats--by the way, I am going to get rid of those too. They are not profitable.

(Testimony of George F. Naylor.)

Q. They are not profitable either, are they?

A. That is right.

Q. This business of owning a boat and owning nets isn't a very profitable business, is it? [1638]

A. That should be a fisherman's business, not a market owner's business. I will tell you that for sure.

Q. Because the fishermen work on the boats?

A. That is why, and they will take care of the boat and their own gear that they pay for.

Q. How many boats were using your nets during the year 1946? A. Two.

Q. What boats are those?

A. The boat Louise and the Boat Reliance.

Q. The Reliance you have already mentioned, isn't that right?

A. Yes, but it was someone's boat and my gear.

Q. Now with regard to the Louise, did the Louise sell its fish to you?

A. Yes, he sells his fish to me.

Q. Do you know what percentage of the fish you purchase comes from the Louise?

A. Heavens, no.

Q. I think you have already testified that you have employed a man who was a fisherman to repair net. I want to ask you whether in addition you employ fishermen to assist in cleaning and packing fish.

A. Oh, yes, heavens yes. We have the fishermen, and we either have to give them something to do or feed them, one [1639] or the other, so we

(Testimony of George F. Naylor.)

hire them to work in the market, and we hire them to work on nets during the off seasons when there are no fish.

Q. They have to do that in order to continue to eat during that off season?

A. Well, they have to do something to eat, and they like to work down at our place.

Q. So as a regular practice you employ fishermen to assist you in cleaning and packing fish and in doing other things?

A. Not as a regular practice, because as a regular practice when we have any fish the fishermen are all fishing and we have to get outside [1640] help.

Q. Well, I mean during the off season.

A. During the off season whenever we have the occasion to hire any outside help we hire the fishermen, give them the preference of the work.

Q. Now, in addition you own two trucks, do you not? A. I own several trucks.

Q. How many? A. Five.

Q. Are those trucks all operated in conjunction— A. No, they are not.

Q. Let me finish my question, please.

A. Pardon me.

Q. Are all those trucks operated in conjunction with the wholesale place at Newport Beach?

A. That is correct.

Q. Was that so in 1946?

A. That's true.

Q. Who drives those trucks?

(Testimony of George F. Naylor.)

A. Well, we have a truck driver, once in a while we have; most of our trucks have been used in the last year or so for the fishermen to move their gear around and to move their furniture, as an accommodation to the fishermen.

Q. Are any of those trucks operated at all for—withdraw that. You say they are used for the purpose of hauling gear for fishermen? [1641]

A. Yes, we lend them to them at no charge at all. They load their gear on it and haul it around to their houses and to their boats and put it on the street and put it on the racks and tan it at no charge.

Q. And you also utilize some of those trucks in connection with your own operations, do you not?

A. Yes, we do.

Q. How many?

A. At the present time we operate one.

Q. How many in 1946?

A. During the period of the strike, one.

Q. How many during the rest of the time in 1946?

A. Well, we utilized—

Mr. Schwartz: Before or after the strike?

Mr. Margolis: Both before and after.

The Witness: I don't think there has been—just a few occasions where we have used all of our trucks over any given period of time. Most of the time our trucks just stand by in case that we have fish to haul.

Q. (By Mr. Margolis): Do you operate one truck most of the time?

A. Most of the time.

(Testimony of George F. Naylor.)

Q. And the situation with regard to the operation of one truck during the period of the strike was not a unique situation was it? [1642]

A. Oh, no. We have other business that we do besides receiving the fish from the fishermen.

Q. So both before, during and after the strike, as a general rule you operated one truck in connection with your business?

A. During that period of the year when there was no mackerel running, or there were no albacore running, no fish that we haul to the canneries in large quantities, we operated one truck, yes.

Q. For what purpose is that truck operated?

A. To deliver orders.

Q. Any other purpose?

A. Well, to haul the fishermen's gear around and move their furniture.

* * *

Q. (By Mr. Margolis): In asking that question about any other purpose, I was referring to this one truck. Do you use it for any other purpose in connection——

A. Yes, we use it for all other purposes: for fishermen [1643] to haul their gear, sometimes we have to haul salt in it, sometimes we haul barrels in it. It is just a general utility truck. It is used about three hours a day to deliver orders with, the rest of the time it just does whatever work we have for a truck to do.

Q. Sometimes you deliver fish to your wholesale

(Testimony of George F. Naylor.)

place in Newport Beach on that truck isn't that so?

A. To it?

Q. Yes.

A. During that period that you refer to, yes, I believe we did.

Mr. Schwartz: During what period?

The Witness: That period during the strike.

Q. By Mr. Margolis: You have used it at other times for that purpose, have you not?

A. Yes.

Q. There is no special reason for picking out, say, June of 1946, is there? A. Oh, no.

* * *

Q. (By Mr. Margolis): What was the number of employees that you employed at one time during the year 1946? And if there are any changes that occurred, you can tell us about that. [1645]

* * *

The Witness: Our requirements for our help are so varied that it is difficult for me to give you the number of employees that we employed during that period of time. I can tell you that our regular number of employees in the market are four.

Q. (By Mr. Margolis): Besides yourself?

A. And the rest of them are extra help we have.

Q. Up to August, 1946, during the rest of that year you had five? A. Yes.

Q. Do you have any other employees?

A. I had the employees in my market in Los Angeles—

(Testimony of George F. Naylor.)

Mr. Schwartz: If the court please, I object to this and [1647] ask it be stricken as not material to the issues in this case, what other employees there were outside of the Newport operation. Is is not material to the issues in this case.

Mr. Margolis: It is part of the same business.

Mr. Schwartz: I submit it is not part of the same business.

Mr. Margolis: This witness has testified it is part of his business.

The Court: In Los Angeles you conduct a fresh fish business?

The Witness: I did at that time.

The Court: Objection overruled.

The Witness: We had in Los Angeles, I think for the most part we had five employees in Los Angeles.

Q. (By Mr. Margolis): In 1946?

A. Yes.

Q. That was a pretty regular thing during the entire year, is that so? A. Yes.

Q. Did you in addition—all of your other employees connected with your fish business, the various phases of which you have described in your testimony, are temporary employees hired from time to time, is that correct?

Mr. Schwartz: I object to the question on the ground it is not clear what Mr. Margolis means by "all the other [1648] employees."

The Court: A moment ago I said it was material. If the number of employees he has is ma-

(Testimony of George F. Naylor.)

terial, then the number he has in Los Angeles is material. But I fail to see the materiality of all this. It might be material to test his recollection, but we are not trying the size of anyone's business.

Mr. Margolis: It seems to me where a subject is opened on direct examination—I read from 1515: “How many people are employed at your place of business?” is the question asked by Mr. Schwartz—that we have the right to go into the subject on cross examination.

The Court: I think you have gone into it.

Mr. Margolis: I haven't finished. There are other aspects of the business that I want to take up that I have not covered, your Honor.

The Court: The number of employees that he has in his business, that was asked on direct examination, even that is material only, it seems to me, by way of a preliminary matter to set the type or general conduct of his business.

Mr. Schwartz: That is correct.

Mr. Margolis: If it is material for that purpose——

The Court: You have the number now. He isn't employing eight or ten thousand people or several hundred.

Mr. Margolis: We want to get what the whole picture is. [1649]

The Court: You are entitled to get it as far as it is material; but it is material only in connection with the flow of the fish business, the fresh fish business, and the precise number of employees that

(Testimony of George F. Naylor.)

he has—it can't make any difference in this case whether he has five or four, whether they are employed temporarily or permanently.

Mr. Margolis: I don't want to argue the question——

The Court: If he had 500 instead of 5, then there would be some difference, or a hundred; but let's get on, counsel. I will sustain the objection.

Q. (By Mr. Margolis): What is the maximum number of persons that you had in your employ at any given time during 1946?

A. You mean at any one time?

Q. Yes.

Mr. Schwartz: Just a minute. I object on the ground it has been asked and answered.

The Court: It has been. Objection sustained.

Q. (By Mr. Margolis): You have not yet told us the total number, maximum total number of employees you had in your employ in all phases of the fish business during the year 1946, have you?

A. No, I don't believe I could, either, offhand.

Q. Can you give us your best estimate as to that?

A. All during the year of 1946? [1650]

Q. The maximum number that you had at any one given time in all phases of the business.

A. I would say—this is more or less hit or miss—I would say, perhaps——

Mr. Schwartz: If the court please, on that statement of the witness I will object to the question

(Testimony of George F. Naylor.)

on the ground it is asking for speculation on the part of the witness.

The Court: Overruled.

A. I would say that we had at one time perhaps 15 persons.

Q. (By Mr. Margolis): You say perhaps 15; do you mean that is your best estimate, is that right?

A. That is my best estimate, yes, sir.

Q. Of those 15, 5 would be at the Newport market, 5 at the Los Angeles market, and where would the other 5 be?

A. I will amend that. 20. 5 at Los Angeles and 15 at Newport Beach.

Q. Where would the 10 in Newport Beach be employed who were not working at the wholesale market?

A. Well, they would be working at the wholesale market.

Q. Ten additional employees at the wholesale market? A. That's right.

The Court: What is that? During the fish season?

The Witness: During the season, for instance, we got a lot of anchovies and sardines, some big orders we had to pack [1651] sardines and anchovies in barrels, and we had our regular business to conduct, and we had this other stuff to do, and it took a lot of help to do it.

Q. (By Mr. Margolis): Before I go on with that, do you know any of the defendants who are seated here in the court room?

(Testimony of George F. Naylor.)

A. I think I know them all. No, I won't say that. I know Lloyd Munson, and I know Mac over there, and Art.

Q. Mac, you mean Mr. McKittrick?

A. And I know Mr. Zafran. I have never met him, but I know of him.

Q. For the sake of the record, you are using first names——

A. McKittrick; Mr. Hill——

Q. You refer to Mr. Hill? A. Yes.

Q. And Mr. Zafran?

A. Mr. Zafran, and Charlie Mac——

Q. McLauchlan?

A. McLauchlan. And Lackyard.

Q. Lackyard? A. Yes.

Q. Have you had dealings as fishermen with any of these people?

A. I know them all except Mr. Zafran. I have dealt with Mac for a good many years. He has been down at Newport Beach [1652] as a representative of the union. I have known Lloyd Munson, I guess, for ten years, and Art Hill for seven or eight years; and Lackyard is the one I haven't known so long, perhaps three years, four years; and I have known McLauchlan ever since he came to Newport Beach.

* * *

The Witness: And I know Bob Phelps here.

Q. (By Mr. Margolis): You have had dealings with these defendants?

A. Heavens yes, years and years.

No. 11638

United States
Circuit Court of Appeals
For the Ninth Circuit

LOCAL 36 OF THE INTERNATIONAL FISHERMEN AND
ALLIED WORKERS OF AMERICA, JEFF KIBRE,
GILBERT ZAFRAN, CLIFFORD C. KENNISON, F. R.
SMITH, GEORGE KNOWLTON, OTIS W. SAWYER,
W. B. McCOMAS, HARRY A. McKITTRICK, ARTHUR
D. HILL, C. LLOYD MUNSON, CHARLES McLAUCH-
LAN, ROBERT M. PHELPS, BURT D. LACKYARD,
and RAY J. MORKOWSKI,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
In Six Volumes
VOLUME III
Pages 943 to 1422

Upon Appeal from the District Court of the United States
for the Southern District of California
Central Division

DEC 11 1947

No. 11638

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Central Division

(Testimony of George F. Naylor.)

Q. They have sold you fish?

A. Yes, I think most of them have.

Q. One of these defendants has some of your nets now, hasn't he?

A. Yes, sir. I understand that he is going to give them back to me, though. He doesn't want them.

Q. He is otherwise occupied at present?

A. That's right. We are all good friends in spite of this. [1653]

Q. Now you buy both cannery and market fish, don't you? A. That is right.

Q. The species of fish—what species of fish do you buy for the canneries?

A. We buy all of the tuna varieties and mackerels and sardines.

Q. Where do you ship that cannery fish that you buy?

A. Well, most of it is delivered into Long Beach and the San Pedro area; Wilmington, San Pedro and Long Beach area.

Q. Isn't there some fish delivered to San Diego and some to Long Beach?

A. Well, I will tell you, in the past we have delivered some cannery fish to San Diego but it has been a negligible quantity.

Q. What percentage of the total fish that you buy is cannery fish?

A. Well, let me see. It varies with the run of fish. I will tell you what—

(Testimony of George F. Naylor.)

Q. What would you say it was during 1946, approximately?

A. 1946, I will say that fully 50 per cent of the fish, in dollars and cents value, was delivered to the canneries.

Q. Was that an unusual year in that respect, would you say? A. No.

The Court: What do you do, haul the fish from your place [1654] to the canneries?

The Witness: That is right.

The Court: That is what you use the trucks for?

The Witness: That is right. We can haul a lot of fish in each one of those boxes.

The Court: You put them in boxes?

The Witness: No, sir, we just put them in in the truck loose.

Q. (By Mr. Margolis): Do you make reports to the Fish and Wildlife Service?

A. We make reports to the Fish and Game, to the California State Fish and Game. The California state law requires that all fish purchases must be made on their forms and a triplicate copy of that form is returned to the California State Fish and Game.

The Fish and Wildlife Service call us on the phone every morning and ask for the fares that have been received the day previously.

Q. For the fish that has been received?

A. Yes.

Q. What if anything do you give them?

(Testimony of George F. Naylor.)

A. We give them the actual figures in weight.

Q. Of all fish received?

A. Of all varieties of fish that we receive; yes.

Q. Do you pay the same price at any given time for [1655] fish to fishermen who bring in fish on your own boats as you do the fishermen who bring in fish on other boats?

A. That is right.

Q. There is no difference?

A. Occasionally they have come in and caught the market right and got a little bit more than the others, or the independent fishermen may have done that. But as a regular thing we make no—we show no preference at all in the price that we pay our own boats and the price we pay the independent fishermen.

Q. Do you pay the same price for cannery fish as for market fish for the same species?

A. To the fishermen?

Q. Yes. A. Yes.

Q. How do you determine at any given time what price you pay for your fish?

A. Well, it is not a very complicated matter. We know what we are going to get for the fish, or we think we can sell them for, and we know what our overhead is, the cost of handling the fish, and the cost of boxing, icing, and so forth, and what we ought to make in the way of profit, and that is the way the price of fish is computed.

The Court: Do you have regular customers?

The Witness: Surely, we do. [1656]

(Testimony of George F. Naylor.)

The Court: I mean people who buy from you all the time?

The Witness: Yes.

The Court: Is there a change in that?

The Witness: Oh, there is some change in that. Everybody that is in business loses customers and gains new ones, but for the most part our customers that we sell to we have been dealing with for a good many years.

The Court: And is their demand for quantity about the same?

The Witness: No, it is seasonal.

The Court: I mean the same customers take about the same amount of fish every year?

The Witness: Well, I wouldn't even say that. You see, there are so many things that enter into it. For instance, there is the run of fish that you have. Some years you don't have any fish at all, like this spring, ordinarily we do a lot of mackerel business at this time of the year, just getting in the mackerel and we get all we want and more too. However, this spring there has been no mackerel at all. We have orders that we can't fill. Finally our customers get disgusted with us and cancel their orders.

So it is hard to say that your customers will use practically the same amount of fish all the time.

The Court: Who is a customer, for instance, a restaurant?

The Witness: We have some restaurants [1657]

The Court: Do you have restaurants for cus-

(Testimony of George F. Naylor.)

tomers or do you have markets for customers, which?

The Witness: I will explain it to you. We have restaurants. That is one type of customer. We have markets, that is, retail markets such as butcher shops and small retail fish markets that buy from us. That is another type of customer.

The Court: The retail fish market that buys from you, does he call you up and say, "I want half a ton of fish?"

The Witness: No. We have to run him down and sell it to him. It was true during the war that he would call us up, but now you have to go out and get them.

The Court: In other words, you have to sell them mackerel?

The Witness: You bet your life you do.

The Court: Or if you catch barracuda and these other varieties of fish?

The Witness: He gives you a tough time these days.

Then we have wholesale fish dealers, distributors, in Los Angeles such as the Superior Seafood, Paladini——

The Court: You do not need to name them.

The Witness: Then we have the canneries that buy from us, and then we have processors of vitamin oils that buy livers from us. So we have about six types of customer.

Mr. Margolis: Is your Honor through?

The Court: So the first factor that we know

(Testimony of George F. Naylor.)

which is [1658] more or less constant is that you know how much fish you can dispose of?

The Witness: Yes. We have an idea how much we can dispose of. Sometimes we are wrong—and how.

The Court: All right. Excuse me, counsel, for interrupting.

Q. (By Mr. Margolis): So that you take these various factors into consideration to determine how much you will pay for fish and then you tell the fishermen that that is what you will pay for the fish that is delivered, is that right?

A. That is correct.

Q. Is your rate of profit on fish always the same?

* * *

The Witness: No, I should say it isn't. I will tell you why it isn't, for one reason: In the first place, most of our boats who go out for me know how much money they are going to get for the fish when they come back.

Q. (By Mr. Margolis): They do know that?

A. Absolutely.

Q. How do they know that?

A. Because I will tell them how much I am going to pay them for their fish when they come back, or my man does. [1659]

The Court: Before they leave?

The Witness: Before they leave; that is correct.

Q. (By Mr. Margolis): Does that include the fishermen who fish on boats you own as well as the fishermen who fish on boats you do not own?

(Testimony of George F. Naylor.)

A. That includes everybody.

Q. Do you agree to take their entire catch?

A. That is right. If I send a boat out for me and he is going to fish for me I take his entire catch at the price I tell him, if I tell him before he goes out what the price is going to be.

There are times that I don't tell them because the market may be wobbling and I don't know what I can pay him for them. Then I will tell them, "I can't guarantee any price when you go out," and if they choose to go out that is up to them.

But for the ordinary run of our business, we tell a fisherman how much he is goin to get before he goes out.

Q. So what happens is that the fisherman will come to you and say, "I want to go fishing, say, for barracuda, what will you pay me for a load of fish," and you say, "Six cents," or whatever it is?

A. Twenty cents, my friend.

Q. Twenty cents?

A. Yes. Let's not get down to the low brackets. It is [1660] bad.

Q. Twenty cents. I was thinking of——

A. Mackerel.

Q. ——mackerel. Twenty cents for barracuda, you say. So you say, "I will take whatever fish you bring in for 20 cents."

A. That is right, either that or I put them on a limit. I will say to them, "Well, you can bring in 500 or a thousand pounds or a ton or whatever you want." I may do that. But if I send a boat out on

(Testimony of George F. Naylor.)

a price when he goes out with no limit on him at all I will take all the fish he brings me when he comes in regardless of how much it is.

The Court: Or what kind of fish?

The Witness: Or what kind of fish, if I have agreed to take it.

Q. (By Mr. Margolis): You set the price for the particular species of fish though?

A. Yes.

Q. The price on various species differs, is that right?

A. That is right.

Q. So this man goes out, and say you have said that you will pay him 20 cents for barracuda, and he comes back with a load of barracuda, you take the entire load of barracuda and pay him 20 cents for it? [1661]

A. That is right.

Q. If you can't sell all of that fish, what do you do with the surplus, store some of it?

A. Well, I don't store much of it, I will promise you that. I sell it, and if I can't get my money out of it I will take less. I recall one instance very well when Art Hill over there brought me a load of barracuda about four years ago, he and about 20 other boats, and we paid them 29 cents for it—that was on a Friday or Saturday—and the following Monday morning we found that the market was 12½ cents delivered in Los Angeles.

Q. What did you do?

(Testimony of George F. Naylor.)

A. We didn't store any of that fish; we sold it and took our loss right there.

Q. Do you have storage facilities?

A. Oh, yes.

Q. In your own plant?

A. That is right.

Q. Both at Newport and—do you have storage facilities in Los Angeles also?

A. Yes, that is right.

Q. To what extent do you have storage, for how much fish?

A. At Newport Beach? Are you talking about freezing facilities or just storage facilities? [1662]

Q. I am talking first of all about storage facilities. In storage facilities you just ice the fish, isn't that right?

A. That is right. At Newport Beach we can handle it in our icebox—well, we have handled in our business approximately 25 tons of fish.

Q. How about Los Angeles?

A. And Los Angeles could have handled at that time perhaps another 20,000 pounds.

Q. One was 25 tons, you say, and the other was 20,000 pounds?

A. That is right.

Q. Or 10 tons. A. That is right.

Q. So between the two places at that time you had storage facilities for 35 ton of fish?

A. That is right.

(Testimony of George F. Naylor.)

Q. And you utilized those storage facilities, did you not?

A. Not very often.

Q. Didn't you utilize them at any time?

A. I never have utilized both of them, no. The only time we have ever utilized storage facilities at Newport Beach is when we would get in a big load and wouldn't have time to get it out that day. Then we would put the fish in our box [1663] and hold it until the following day and then it would go out. We make no attempt to hold our fish or keep it.

Q. Do you freeze any of your fish?

A. We can freeze some. As a rule we don't. We usually send it out to public storage.

Q. Where do you send it?

A. It all depends. Many times we have frozen fish in Los Angeles at the Los Angeles Ice & Cold Storage Company; we have held fish at the Union Ice & Cold Storage Company in Wilmington; and we have frozen and stored some fish at the Harbor Ice & Cold Storage at Newport Beach.

Q. What are the capacities of those places for storage?

A. Oh, heavens, they have very large capacities. During the past two years there hasn't been much of that space available due to the fact that the government and everybody else was storing everything they could in them.

Q. During 1946 was space available?

A. During the war there was very little space available anywhere to store.

(Testimony of George F. Naylor.)

Q. During 1946 was space available when you wanted it?

A. We didn't want any in 1946.

Q. You weren't looking for any?

A. No. All you had to do was when a customer called up and said, "I want a ton of fish," you would say, "Sorry, I can only give you 500 pounds." The demand was greater than the [1946] supply. That was easy going.

Q. You didn't have any problems in 1946?

A. No problems of sale whatsoever.

Q. Of the kind you referred to four years ago when you had that situation?

A. That is right. The war was going on then too by the way.

Q. Now when you freeze fish you sometimes keep it in storage for a long time, isn't that so?

A. Well, we never carry it over unless we can't get rid of it from one season to another.

Q. You carry it, for example, from one season when there is a lot of fish coming in to the next season when there is little or no fish coming in, is that right?

A. Well, it has never been our policy to do that. There are dealers that do that, but it has never been our policy to do that.

Q. Don't you sell fish during the off season?

A. Sure, but I sell fresh fish.

Q. How long have you kept fish that you stored, have you kept it for a year?

A. Oh, sure. There have been times when I have been stuck that I have kept it for a year.

(Testimony of George F. Naylor.)

The Court: Is that material, counsel?

Mr. Margolis: I think it is. [1665]

The Court: I cannot see how it is.

Mr. Margolis: I think it is.

The Court: Unless you are prepared to show that he caught and stored fish during this period in question I can't see its materiality.

Mr. Margolis: I think it is material, your Honor, from the standpoint of the economic position of the dealer with relation to the fishermen.

Mr. Schwartz: And that question, we submit, is not material to the issue at all.

The Court: That is not material at all, counsel.

Mr. Schwartz: The economic conditions of the defendants have nothing to do with this case.

Mr. Margolis: I submit that it is under the rule of reason, your Honor.

The Court: It is not material. [1666]

* * *

(The following proceedings were had in the presence of the jury):

* * *

Mr. Margolis: I understand counsel has located the letter which is referred to on Government's 37, and at this time I ask that it be produced.

Mr. Schwartz: At this time, if the Court please, the government withdraws its offer of Exhibit 37, for identification.

Mr. Margolis: I don't know what the government is trying to conceal.

(Testimony of George F. Naylor.)

Mr. Schwartz: I object to any statement Mr. Margolis may make about concealment. I am not trying to conceal anything from the court or the jury. In my opinion that letter is not material to the issues. [1670]

Mr. Margolis: That is for the court to decide.

Mr. Schwartz: And rather than make an issue about it, I have decided to withdraw Exhibit 37, for identification.

The Court: Here we have had a nice long recess and I thought everybody would be in a good humor.

Mr. Margolis: We are in a very good humor. We just think we ought to go through with this.

The Court: Let me see now. You are withdrawing your offer of Exhibit 37, for identification,—

Mr. Schwartz: Yes, your Honor.

The Court: —in evidence.

Mr. Schwartz: Yes, your Honor.

The Court: It remains for identification?

Mr. Schwartz: Yes, your Honor.

The Court: The contents of the exhibit have not yet been gotten to the jury.

Mr. Margolis: I ask your Honor, having gone into the matter, that the government be directed to produce, so that we can see it and offer it in evidence, the document which is referred to in Government's Exhibit 37. If it is material it ought to get into this record.

The Court: It hasn't got into the record.

Mr. Schwartz: Nor has it been gone into.

(Testimony of George F. Naylor.)

The Court: Nor have the contents of the letter been exhibited to the jury. [1671]

Mr. Margolis: I ask that we have an opportunity to see it, your Honor.

The Court: The government has the right to withdraw their offer in evidence if they wish to.

Mr. Margolis: I understand that, but——

The Court: And they have withdrawn it.

Mr. Margolis: I request that we be allowed to see that exhibit. Your Honor has the power to order the government to produce for inspection this document, and I think we ought to be able to see it.

The Court: I have the power to order them to produce something which they expect to rely on or produce in court. I don't have the power to order the government to produce everything they may have in the files.

Mr. Margolis: If it is material to the case——

Mr. Schwartz: I insist it is not material, and that is the reason I am withdrawing the offer.

The Court: It is withdrawn. We will proceed.

Mr. Margolis: I want the record to show that we would like to have the record complete.

The Court: The record is complete.

Mr. Margolis: Not with Exhibit 37 or the letter referred to.

The Court: It remains for identification.

Mr. Margolis: If your Honor please, at this time, then, [1672] I move to strike all of this witness' testimony with relation to Government's Exhibit 37.

(Testimony of George F. Naylor.)

Mr. Schwartz: There has been no testimony with relation to Exhibit 37, except that he received it. It hasn't gone to the jury, nor has anything in that letter been read to the jury.

Mr. Margolis: We know it hasn't gone to the jury, but there has been testimony.

The Court: The motion is denied. It remains for identification.

Mr. Schwartz: If they want to offer 37, your Honor, they may.

The Court: We all know that.

Mr. Margolis: We want to offer the whole thing. Let's make that clear.

Mr. Schwartz: That is the whole thing. I insisted that it was at the time I made it.

The Court: Let me see now; we have wasted five minutes in a little acrimonious discussion. Let's get on and get some evidence here.

Q. (By Mr. Margolis): You sell fish to hotels, restaurants, canneries, and to other wholesalers, is that right?

A. And markets, yes.

Q. Do you sell the same species of fish at any given time to all of these outlets at the same price?

A. No.

Q. You get a different price——

A. That is correct.

Q. ——from one source than you do from another?

A. That is correct.

(Testimony of George F. Naylor.)

Q. Do you pay the fishermen a different price for the fish, depending upon where you are going to sell it? A. No.

Q. So, for some of the fish that you get from a fisherman you will get a higher price when you sell it than for some of the other?

A. That is true, as far as the actual price that we sell it for is concerned. But with many of our orders that we sell and deliver, there is greater expense to it. For instance, if a restaurant buys 10 pounds of fish from you, you obviously can't deliver him 10 pounds of fish at the same rate per pound that you can if you deliver a cannery 50,000 pounds of fish. Naturally you would have to get more for a smaller delivery.

Q. Is that the only basis for the different price?

A. All of the expense attendant to small orders is greater per pound than the expense of larger orders.

Q. Do you sell fish to the wholesalers at the same price that you sell it to the canneries?

A. Sometimes. [1674]

Q. Sometimes different prices?

A. Sometimes at a different price. Sometimes at a lesser price.

The Court: Your price, then, is determined by quantity?

The Witness: That's right.

The Court: And delivery charges?

The Witness: That's right.

(Testimony of George F. Naylor.)

Q. (By Mr. Margolis): You determine the price which you sell the fish to any given outlet upon the basis of the cost to you plus a profit to you, is that right?

A. Sometimes that's right. Sometimes our prices are regulated by our competitors. We may be paying—for instance, we are paying today in Newport Beach 20 cents for barracuda; Santa Monica is paying 17 cents for that same barracuda; if we would get in a large supply of barracuda today, and Santa Monica would get in a large supply of barracuda today, it may be that Santa Monica would sell to the wholesale dealers in Los Angeles for 20 cents—well, obviously there is no profit in it for us if we are forced to meet a 20-cent market.

Q. You would then also have to sell for 20 cents and make no profit?

A. I don't think any of these markets in Los Angeles are so philanthropically inclined that they would be willing to pay us more for it.

Q. You would have to sell for 20 cents? [1675]

A. Tomorrow I would buy at 17 cents.

The Court: The question is what you paid 20 cents for you would have to sell at 20 cents?

The Witness: That is right.

Q. (By Mr. Margolis): And that is because fish from San Pedro was selling at 20 cents?

A. Yes, or maybe San Diego or Santa Ana, or any other port in Southern California.

Q. If at any given time you are able to buy fish for 17 cents, and San Pedro was paying 20 cents

(Testimony of George F. Naylor.)

for it, you would be able to get a better price for your fish as a result of that, isn't that right?

A. That is correct. However, none of these things were applicable from January 1st to July 1st of 1946, because we had the O.P.A. that regulated all of our prices. However, they did allow a differential in the prices to canneries, wholesale markets, retail markets, and restaurants. [1676]

Q. In other words, during that period you were selling all of your fish at the ceiling price, is that right?

A. That is correct.

Q. Were you always paying the fishermen the ceiling price for fish?

A. I never paid them less.

Q. You never paid them less? A. No.

Q. You know that other dealers paid them less?

A. Yes, of course I do.

The Court: Mr. Naylor, by the way, in some businesses, in the food business, the milk business, for instance, it said that there had to be a 20 per cent excess of the demand in order to meet the supply because it fluctuates up and down. Is that true in the fish business too?

The Witness: It fluctuates even more than the milk business does.

The Court: The demand for fish?

The Witness: That is right. The demand fluctuates and the production fluctuates. Fish are unpredictable. You can't tell whether today you are going to have 100 tons or whether you are going to have 100 pounds.

(Testimony of George F. Naylor.)

The Court: What I mean to say is, in the milk business for a given area they have to figure that there is 20 per cent more than the normal supply because of the fluctuation in order [1677] to meet the demand. Do you calculate in your business on having a percentage in excess of your actual supply?

The Witness: Yes, that is what we try to do.

The Court: Do you succeed in doing that?

The Witness: Generally we do. Sometimes our guess is bad.

The Court: I see.

Q. (By Mr. Margolis): In your direct testimony you referred to buying fish at the market price. Can you tell us what you meant by the words "market price"?

A. Yes, I will. My competitor down the street, if he was paying 20 cents for barracuda, and my fishermen are independent, even my own boats are that way, if I don't pay as much for fish as he pays then I don't get any fish. If I don't want them, that is perfectly satisfactory to me. I would like to have him go down there. But if I need the fish then I will either have to meet his price or I will have to do without the fish.

Q. In other words, the market price then that you refer to is the price which you yourself and other wholesalers pay in order to buy fish at any given time?

A. I think you will find that your competitor regulates your price, the price that you buy at and the price that you sell at. [1678]

(Testimony of George F. Naylor.)

Q. In other words, you and your competitors buy and sell at the same prices, generally speaking, is that right?

A. Well, not always. There is the instance where Santa Monica pays 17 cents for barracuda and we pay 20 cents for it.

The Court: I think he means your competitors in the immediate vicinity, isn't that what you mean?

Mr. Margolis: Well, yes.

The Witness: Even that isn't true because frequently we pay more than our competitors do. It depends on how bad we want the fish, what we have it sold for. We know our business. We know what we can expect to get out of our fish.

Q. (By Mr. Margolis): What did you mean when you said you buy your fish at the market price?

A. That means my market price, the price that I have.

Q. Is that what you meant when you said that?

A. Certainly. I don't mean a market price that is in effect everywhere. I run my own business. If I want to pay 20 cents for barracuda, I pay 20 cents. If I want to pay 25 cents, I pay 25 cents for it. I know what I will be able to sell it for. If I get in a very large amount of barracuda, then obviously if I am going to make a profit at it I have to be able to offer it to my trade at the same price that my competitors offers it at. And so I judge my price accordingly. [1679]

(Testimony of George F. Naylor.)

Q. In other words, when you said, "We buy our fish from fishermen at whatever the market price happens to be," what you meant was that you buy your fish from fishermen at whatever you think you can pay, is that what you meant?

A. That is correct. If somebody else happens to be paying 20 cents and I need the fish, and maybe I have only been offering 18 cents for barracuda, if I want that fish I will pay 20 cents. Maybe I will pay 22 cents. It all depends.

Q. That is what you meant when you referred to market price, is that right?

A. That is correct.

Q. Now you also said in turn that you sell your fish at whatever the market is?

A. Sure.

Q. What do you mean by that?

A. Well, I mean to say that if I can buy barracuda for 20 cents a pound and sell it for 25 cents a pound, that is my market price.

Q. You meant by market price whatever price you can get for your fish?

A. I may sell my fish at 23 cents a pound against a 24 cents a pound price out of San Pedro, or I may sell it at 22 cents as against a 24-cent price out of Santa Monica.

Q. When you refer to market price you meant whatever price you felt you personally could pay?

A. Sure.

(Testimony of George F. Naylor.)

Q. Whatever price you felt you personally could sell it for? A. That is correct.

Q. That is your conception of the term market price? A. That is the conception.

Q. How many boats fish regularly out of Newport Beach?

A. I am not prepared to state offhand how many boats fish out of Newport Beach. I imagine there is at least 200.

Q. How many boats do you buy fish from regularly?

A. At the present time I don't think that I buy from over 20.

Q. What was the situation in 1946?

A. It was practically the same.

Q. How many different boats do you buy from over the course of the year?

A. Well, of course there are some transient boats that come in from San Pedro, San Diego and Santa Barbara, other localities, that will swell that number somewhat. I would say that throughout the year I might buy fish off of 50 different boats.

Q. What percentage of the fish that you buy comes from boats which you do not own, which you do not charter or operate, where you have no loans advanced, where you do not own the nets which are used, or in which you have no other form [1681] of interest?

(Testimony of George F. Naylor.)

A. I would say that I bought fully 50 per cent of my fish from such boats.

However, the fact that a boat has my gear doesn't necessarily mean that he is obligated to sell me his fish. I expect him to sell me his fish, but there is no obligation there. I think that we have had some gear on Lloyd Munson's boat. He brought us some of the fish and some of the fish he delivered elsewhere. It is kind of like letting one hand wash the other. If we help some fishermen we expect naturally that he will reciprocate. I think he feels the same way about it.

Q. Of course you are at liberty at any time you want to to take that gear away from Mr. Munson, are you not?

A. That is correct, but I haven't done it.

Q. During the year 1946 you handled, I believe you said, anchovies and sardines for bait purposes?

A. That is right, and for salting too.

Q. For salting? For what purpose?

A. For food.

Q. Where do you sell the sardines and anchovies?

A. They are sold down in—let's see, we made shipments to Honolulu, to the Philippines, to Chinese ports, and down into the West Indies.

Q. Is this during 1946? A. 1946; yes.

Q. What quantities of anchovies and sardines were you handling then during that period?

A. Well, just prior to May we were handling—

(Testimony of George F. Naylor.)

oh, heavens—sometimes as much as 20 ton of fish a day, and sometimes as little as two or three tons, depending on what the boats caught and what our orders were.

Q. When you say a fish, are you referring now to anchovies and sardines?

A. I am referring to anchovies and sardines.

Q. In addition to all the other species of fish?

A. That is right.

Q. From what boats did you buy anchovies and sardines?

A. We bought anchovies and sardines from the boat Maude and the boat Cerio, from the boat Reliance, and I think we bought some from a boat Endeavor too.

The Court: Anchovies and sardines, they have to fish for them by the dark of the moon, do they not?

The Witness: For cannery purposes they fish sardines during the dark of the moon, but local fishermen that fish out of Newport Beach fish anchovies and sardines both in the daytime.

The Court: And at night?

The Witness: And at night, but principally in the daytime, and then they can fish during any phase of the moon.

The Court: I see. [1683]

Q. (By Mr. Margolis): Who was your attorney in 1946? A. Vernon Gray.

* * *

(Testimony of George F. Naylor.)

Q. Is that the attorney to whom you presented the contract which was given to you concerning which you have testified for his advice?

A. That is correct.

Q. Did you give it to any other attorney?

A. No.

Q. At the time that the contract was presented to you, [1684] who was present besides yourself, the first time the contract was presented to you?

A. I believe that Charlie McLauchlan and Bob Phelps presented that to me the first time. Maybe Mr. Lackyard was there but I don't remember.

Q. Are you sure Bob Phelps was there?

A. I am quite sure he was. However, this has been a long time ago; last May sometime.

Q. You might very well have been mistaken?

A. The three of them came to see me so often and several others that I seem to remember Bob and Charlie the best because they were there the oftenest.

Q. You have no distinct recollection of Mr. Phelps being there at that particular time?

A. No, but Charlie was there.

Mr. Schwartz: Charlie McLauchlan?

The Witness: Charlie McLauchlan; yes.

Q. (By Mr. Margolis): Now at that time did you look at the contract?

A. I just gave it a cursory examination and told them that I would submit it to my attorney, which I did.

(Testimony of George F. Naylor.)

Q. Did you say anything else to them?

A. Oh, I said if the contract is—if my attorney okays it, and so forth, and it is all right, I will be happy to sign it. I said I think that it would be a fine thing for [1685] myself to know that nobody else was paying less for the fish than I was.

Q. Did you say you thought that the contract was fair and reasonable?

A. I said that providing my attorney said it was legal, I would be happy to do it. Of course when they first presented the contract to me the only thing that was suggested in the contract was that there would be OPA prices maintained as far as possible, and that they would attempt to fix the prices on other species of fish later on.

Q. Did you tell them at that time that looking at the contract you thought it was fair and reasonable?

A. I don't remember whether I did or not.

Q. Do you remember whether you told them that in one of your subsequent conversations that you had with Mr. McLauchlan or Mr. Phelps or any of the other fishermen? A. No, I don't. [1686]

* * *

Q. Do you know whether wholesale dealers during the month of June 1946 located in Newport Beach, California, other than your own, were buying fresh fish from fishermen being there fishing at Newport Beach? A. I do.

Q. Were they? A. Yes.

Q. Do you know what date it was that the contract was presented to you?

A. I don't remember the exact date of it.

(Testimony of George F. Naylor.)

Q. Would you give us your best recollection as to the date?

A. Well, my best recollection is that it was some time in May.

Q. Would you say it was the first part of May, the middle of May or towards the end of May?

A. I could perhaps give you an exact date if I were in my office, but I would hesitate to say at this time. As I [1687] recall, it was sometime around the middle of May. As I remember, there was about six weeks of picketing.

Q. Let me ask you this: Do you remember the day on which the picket line was established?

A. No, I don't.

Q. Was it towards the end of May, the first of June?

A. I would say that it was approximately the middle of May.

Q. That the picket line was established?

A. As near as I can remember.

Q. Was this contract presented to you before or after the picket line was established?

A. Before the picket line.

Q. How long before?

A. I think it was four or five days before that.

Q. And did you have any other conversations with Mr. McLauchlan or any other men from the union between the time of the presentation and the time that you say the picket line was established?

A. I certainly did. They were down to see me several times.

(Testimony of George F. Naylor.)

Q. And that was during that four-, five-day period, is that right? A. That is right [1688]

Q. Do you know a fisherman by the name of Souder, S-o-u-d-e-r? A. Yes.

Q. Do you know one by the name of Lee?

A. Yes.

Q. You have loaned both of those fishermen money from time to time, have you not?

A. I think I have advanced them money at different times, yes.

Q. These two fishermen always bring in their fish to you, do they not?

A. Well, there are a number of the Souders, and Morris Souder has fished for me off and on for ten years, but he hasn't always brought me his fish. He has delivered fish to other dealers in Newport Beach many times during that period of time.

Q. He has always brought it to you first, has he not? A. What?

Q. He has always brought it to you first, has he not? A. Heavens, no.

Q. During the periods that he owed you money, he brought it to you first, has he not?

A. Not necessarily.

Q. Do you know whether or not he did?

A. I know, but I say not necessarily. I have known [1689] of instances when he has owed me money when he hasn't brought me the fish and hasn't given me the first offer on it.

(Testimony of George F. Naylor.)

Q. (By Mr. Margolis): Do you recall in 1944 you owned a boat known as the Tropic Bird?

A. Yes, sir.

Q. That boat was operated by a number of fishermen on the same basis as other boats that you own, is that right?

A. That's right.

Q. At that time a fisherman by the name of Andy Brockett was the skipper; do you remember that?

A. Well, Andy Brockett had the Tropic Bird for a while, I don't remember whether it was in 1944, it seems to me it was later than that.

* * *

Q. (By Mr. Margolis): Do you recall a situation in 1944, [1690] or perhaps 1945, when Andy Brockett was operating the Tropic Bird, a boat that you owned, and brought in some fish and delivered it to you, and you refused to pay him or the men who were fishing on the boat their shares until they spent about two weeks repairing nets?

Mr. Schwartz: Just a minute. If the court please, I don't see the materiality of that question. I take it that the previous question was preliminary to this one.

The Court: 1944-45?

Mr. Schwartz: Yes, sir.

Mr. Margolis: I think it goes to the question of control over the fishermen, your Honor.

Mr. Schwartz: The question, as I understand it, was as to whether he would pay these people for their share of the fish until they had fixed the nets. Am I correct?

(Testimony of George F. Naylor.)

Mr. Margolis: That is right. It goes to the question of control over the fishermen.

Mr. Schwartz: I submit that is not material to the issues in this case.

The Court: Objection sustained.

Mr. Margolis: If your Honor please, may I say this? He was asked a question about employer-employee relationship, and this goes to the question of control, which is one of the elements of whether or not there is an employer-employee relationship.

I call your attention, for example, to the Newsboys case, in which the elements of control were taken into consideration by the Supreme Court of the United States in determining whether or not there was an employer-employee relationship; and I think if counsel can go into a conclusion, we ought to go into the facts upon which that conclusion is based.

Mr. Schwartz: If the court please, I don't see where there is any question of control.

The Court: Let's assume that that was true, if the thing is immaterial it doesn't make any difference whether it is true or isn't true. I have sustained the objection on the ground it is immaterial.

* * *

Mr. Margolis: I understand we have a right to make an offer of proof when an objection is sustained.

The Court: Out of the presence of the jury.

Mr. Margolis: I want to reserve that right.

(Testimony of George F. Naylor.)

The Court: You may reserve it.

Mr. Margolis: And prove what the answer would be. [1692]

The Court: It does not make any difference what the answer would be. It is immaterial.

Q. (By Mr. Margolis): Isn't it a fact that in 1944 and 1945 this group of fishermen I have referred to repaired nets for two weeks, and that thereafter they were paid and that the withholding tax was withheld on the basis of a three-week period or a period in excess of two weeks, including the period spent in repairing nets and the period in fishing?

Mr. Schwartz: Same objection, your Honor.

The Court: The same ruling.

Mr. Schwartz: May we have a direction of the court as to this line of questioning?

The Court: Yes, I think so. Counsel cannot do indirectly what he cannot do directly. I just stated if you have an offer of proof you must make it outside the presence of the jury. I have indicated that this is immaterial, and counsel should not persist in the line of questioning until the offer of proof is made and ruled on.

Q. (By Mr. Margolis): Isn't it a fact, Mr. Naylor, that with respect to the boats which you own you give directions to the fishermen as to what species of fish they should go fishing for and which ones you will accept?

A. I do not.

Q. You say that you have never done that?

(Testimony of George F. Naylor.)

A. Certainly I might tell them, might give them an [1693] order for some certain variety of fish. If they want to go and fish for that fish, that is entirely up to them. I never tell them: you have to go fish shark or barracuda, or anchovies or sardines. That is entirely up to their own discretion.

Q. Isn't it a fact when you give them the orders for those kinds of fish they go fishing for you and get the kind of fish you have ordered?

A. No, it isn't. That is not the case at all.

Q. They go fishing——

A. My fishermen come and get a boat, and they say, "I think I will put some barracuda gear aboard," or "I will fish for sardines," or "I think I will fish for shark, have you got any shark nets?" It is their suggestion what they will fish for. When the Reliance was fishing for bait for the sport fishing fleet, I said, "Casey, I can use 10 tons of sardines tomorrow," and then he could bring me those sardines if he wanted to, or he didn't have to.

Q. He did, didn't he?

A. He was glad to get the money, I think. He caught them when he could. But there is nothing compulsory about it at all. The fact of the matter is that those boats were fishing, and the principal part of their earnings was derived from another source than from the Bayside Fish Market.

Q. They were delivering some of their fish to the [1694] canneries and some of the fish to——

A. No, they were delivering some of their fish to another dealer that was salting fish; a direct

(Testimony of George F. Naylor.)

competitor of mine. They were delivering some fish to the sport fishing fleet for live bait, and they delivered some to me.

Q. Isn't it a fact that they offered you the fish first when they brought it in, however?

A. No, sir, that is not a fact.

Q. Isn't it a fact that you tell these fishermen—withdraw that. The *Reliance* wasn't a boat you owned, was it?

A. No; it is a boat that I operated.

Q. Isn't it a fact that on the boats which you own you tell the fishermen the type of gear which is to be used?

A. No, sir, that is not a fact.

Q. Isn't it a fact that on the boats which you own you tell the fishermen where the fish is to be delivered?

A. No, sir, that is not a fact, either.

Q. Isn't it a fact that on the boats that you own you tell the fishermen what fish they must fish for and what prices you will pay, and they must deliver to you?

A. No, that is not a fact.

Q. Isn't it a fact that on the boats that you own you tell the fishermen what size fish you will accept and what size you will not accept?

A. That is not a fact. Fish and game does that.

Q. Isn't it a fact that on the boats that you own that—

(Testimony of George F. Naylor.)

The Court: Just a minute. Did you wish to add to that?

The Witness: Yes. The Fish and Game tells them what size fish they can bring in and what varieties they can bring in.

Q. (By Mr. Margolis): I mean within the limits allowed by law there are various sizes of fish, are there not?

A. Yes. We never tell the fishermen what size to bring in.

Q. All right. Isn't it a fact that on the boats that you own you tell the skipper what fishermen should be employed on the boat?

A. We do not?

Q. Isn't it a fact that when you make arrangements for the use of your boats you have an understanding that certain individuals will not be taken to work or be given work on any of your boats?

A. No, sir, that is not a fact. [1696]

* * *

Q. (By Mr. Margolis): You have been shown Government's Exhibit 37, for identification; is that the original letter which you received?

A. I think it is.

Q.: You turned that over to the government, is that right? A. That's right. [1697]

Q. And when you turned in over to the government you turned over at the same time any enclosures that went with it, did you not?

(Testimony of George F. Naylor.)

A. I probably did. I don't remember whether there was any enclosures with it, or not. There probably was. [1698]

* * *

The Court: Excuse me. I think there is another witness waiting around here with some records. Obviously we will not be able to dispose of him this afternoon. What is his name?

Mr. Schwartz: Tendick.

* * *

The Court: Will you have him step in?

Mr. Tendick, quite obviously we will be unable to get to you this afternoon. You have those two folders here. I will mark them for identification and you can leave them this evening and counsel can go over them tonight and if you can return tomorrow afternoon at 2:00 o'clock—will you be prepared to cross-examine him further at that time? [1703]

Mr. Kenny: Yes, that will be satisfactory.

The Court: The dailies will be marked for identification next in order.

The Clerk: No. 39.

(The documents referred to were marked Government's Exhibit No. 39 for identification.)

The Court: The monthlies will be No. 40.

(The documents referred to were marked Government's Exhibit No. 40.)

(Testimony of George F. Naylor.)

The Court: They will be marked 39 and 40. They will be left here with the clerk. [1704]

* * *

Q. Do you know Mr. Tendick of the Fish and Wild Life Service of the Department of the Interior, who was just in the court room?

A. I do.

Q. Do you supply him information for his statistical releases? A. I do.

Q. How do you supply that information, by furnishing it to his representative or by telephone?

A. They call me every morning and I give them [1705] information.

Q. Every morning?

A. With the exception of Saturdays and Sundays.

Q. What information do you give them, Mr. Naylor?

A. I give them the towns and the variety of fish that we receive, by varieties.

Q. Do you hold out any part of that information or do you tell him all the poundage and all the varieties?

A. All the poundage of all the varieties.

Q. And your information to the State of California, Department of Fish and Game, that goes in on the copies of the purchase orders, is that correct?

A. That is correct.

The Court: That is what they call the fish tickets?

(Testimony of George F. Naylor.)

The Witness: That is right.

Q. (By Mr. Garrett): Do you supply the information to the Department of Wild Life and Fisheries in any other way than what you have just described? A. No.

Q. Do you make any deductions or computations on the material that you give them whatever?

A. No. I think the only discrepancy at all is where we might receive $4\frac{1}{2}$ pounds of fish or something like that. We give them the figures in round numbers; no half pounds or [1706] quarter pounds.

Q. Otherwise the figures they get are your total receipts, is that right? A. That is right.

Q. Now at the time you sent the contract, which is Government's Exhibit No. 3 in evidence, to Mr. Gray, you had not yet given the representatives of the union a definite answer, had you, as to what you were going to do? A. That is right.

Q. And you gave them that answer later after you heard from Mr. Grace, was that it?

A. I don't believe that I ever gave them an answer. I think before they got through with me they had the picket line out in front.

Q. Then it isn't true that you ever conveyed to them any information whatever?

A. I may have. I don't recall exactly but I remember we were negotiating back and forth and discussing these things and suddenly without any further discussion or anything we had the picket line in front of our place.

(Testimony of George F. Naylor.)

Q. As to your conveying to them any opinion of Mr. Gray's as to the possible illegality of the contract?

A. Oh, yes, I did give them that information.

Q. Would it be fair to say that your testimony now in that respect is that you are not certain, or are you certain? [1707]

A. I am certain that I gave them that information.

Q. Your uncertainty at the present time consists of not knowing whether you gave them that information before or after the strike started, is that correct?

A. That is correct; more or less correct.

Q. You have testified that with respect to certain portions at least of the agreement you were satisfied with them at the time the agreement was presented, is that a correct statement of your testimony?

A. I thought at the time that there were some things in the agreement that were acceptable but there were some things in the agreement that were not acceptable. As a whole they were unacceptable to me.

Q. Did you at any time offer or propose to execute the parts which were acceptable to you?

A. No.

Mr. Schwartz: I object to that, if the court please.

The Court: He has answered.

(Testimony of George F. Naylor.)

Mr. Schwartz: What was the answer?

The Reporter: "No."

Q. (By Mr. Garrett): I take it then that as far as you are concerned, you are at present uncertain as to whether you ever conveyed to any representatives of the union any criticism of the contract prior to the occurrence of the strike, is that right? [1708]

A. Would you please repeat your question?

Mr. Garrett: The reporter will read it.

(The question referred to was read by the reporter, as follows:

("Q. I take it then that as far as you are concerned, you are at present uncertain as to whether you ever conveyed to any representatives of the union any criticism of the contract prior to the occurrence of the strike, is that right?")

The Witness: I never conveyed any criticism of the contract. The only thing I said was that my attorney said that the contract was—that I shouldn't sign the contract.

Q. (By Mr. Garrett): Do you recall *who said* that to?

A. Oh, heavens, either Bob Phelps or Charlie McLauchlan. I think either one of those two.

Q. But you can't recall which?

A. No, I don't recall which. It was some bona fide representative of the union, however.

Q. Someone you assumed to be a bona fide representative?

(Testimony of George F. Naylor.)

A. Well, they presented their——

Q. You still can't recall——

Mr. Schwartz: What was that?

The Court: They presented their what?

The Witness: They presented themselves as bona fide representatives [1709] of the union. I assumed they were.

Q. (By Mr. Garrett): But you can't recall whether it was before or after the occurrence of the strike that that happened?

A. No, I don't.

Q. Were you operating any of these trucks then, I mean at the time just before the strike occurred?

A. Oh, yes.

Q. How many of them?

A. I think at that time we were only operating one truck regularly. [1710]

* * *

Q. Do you recall, Mr. Naylor—and I will confess my recollection is not too accurate on the subject myself—but do you recall on direct examination giving certain estimates and percentages as to the proportion of your business that was in fresh fish, cannery fish, what kind of fish and another fish, and the proportion of sale to one market and sales to [1718] another? Do you recall giving some testimony along those lines? A. Yes. [1719]

Q. All right. I merely want to ask this general question: such statements as you gave them to us, were they intended to include the receipts of the

(Testimony of George F. Naylor.)

Los Angeles business, as well as the Newport Beach business, or only the Newport Beach business?

A. Only the Newport Beach business.

* * *

Q. And those receipts for the Los Angeles business and those sales for the Los Angeles business, you haven't testified to that, is that correct?

A. I can't hear you.

Q. You haven't testified to any of the receipts by the Los Angeles business or its sales?

A. No. [1720]

Mr. Margolis: First of all, we have ascertained from Mr. Fuss that he made the request of a Mr. Boston at the American Railway Express.

The Court: Mr. Boston?

Mr. Margolis: That is the name; B-o-s-t-o-n.

The Court: Yes. That was mentioned in the testimony.

Mr. Garrett: That was the man who was on the stand.

Mr. Schwartz: That is right. He was on the stand.

Mr. Rubin: I would like to state that during the afternoon, on learning that information, in the presence of Mr. Fuss I called Mr. Boston and explained to him the purport of your Honor's ruling, as I understood it, and I understand that there will be no problem with respect to Mr. Fuss or Mr. Law obtaining access to these records. Mr. Boston was under the impression that there is a Federal law preventing the disclosure to anyone except a ship-

(Testimony of George F. Naylor.)

per and consignee, and that is probably true, and I told him that Mr. Ripley was subject to the Court's order and he agreed to cooperate in that respect. I think he simply wanted to protect his own organization. There is no problem now. We have handled it informally, if that is satisfactory to counsel.

The Court: Is that satisfactory?

Mr. Margolis: That is satisfactory. However, I believe that your Honor's order as to us terminated as of today. I assume it will be extended?

The Court: It will be extended until Thursday at 10:00 o'clock.

Mr. Margolis: That is satisfactory.

* * *

Mr. Garrett: Just one other thing. Mr. Rubin has stated that he stated the conditions to Mr. Boston under which apparently his interpretation of the Court's order was based, [1744] that we might be permitted access to the records of the Railway Express. I should like to know on the record at this time what, if any, restrictions were placed on our examination of the books by the instructions given by the Government to Mr. Boston.

The Court: I instructed whoever was here that day that those particular records, those slips, whatever they were, would be made available.

Mr. Rubin: I didn't give Mr. Boston any instructions, your Honor.

The Court: Whoever was here, he knows what they want.

(Testimony of George F. Naylor.)

Mr. Margolis: If there are any problems, we can break them up.

The Court: I do not think there will be any difficulty.

Mr. Margolis: I want to say, your Honor, that the other two places where Mr. Fuss was admitted entrance, he had no problems. The only problem that occurred as far as Mr. Fuss was concerned was at the American Railway Express.

I do have another matter to take up in connection with that before making an offer of proof, your Honor. For the period involved, Mr. Fuss has made some summaries from those records to supplement the information which was obtained by the Government. Now we are in this position: We couldn't ask the company to make the summaries for us, as the Government was able to do, and therefore we had to make them ourselves, [1745] and probably the only actually proper way of getting them in may be to subpoena those records from which a summary was made, which is something we don't want to do.

The Court: There is a solution to all of these problems in the new rules. The Court can appoint an expert to be the Court's witness to go down and examine the records and ascertain from those records the particular data that is desired and draw the conclusions and opinions from it that any other accountant or economist or accountant could, because I take it what you are interested in is the flow

(Testimony of George F. Naylor.)

of fish, that is to say, when I say the flow of fish I mean in the whole sense, the amount, quantity, price.

Mr. Margolis: That is right. We have it in terms of pounds, as far as these exhibits are concerned.

I might show these to the Government and it might be that they could be submitted on our testimony of what was done, subject to the right of the Government to check these figures as to their accuracy.

The Court: You can discuss that with the Government without me being present.

Mr. Schwartz: I don't get the point that Mr. Margolis is trying to get at.

The Court: You can explore it some other time than this moment.

Mr. Margolis: We don't want to give up our right to recall [1746] the witness in the event that we can't agree on some way of getting this in.

The Court: If there is any further difficulty in connection with the matter, and I deem the matter material, I have resort to the new rules here and can appoint somebody. [1747]

* * *

The Court: Call the jury. Just a moment. You had an offer of proof, I think, yesterday, Mr. Margolis.

Mr. Margolis: Yes.

If your Honor please, this offer of proof is made with respect to the testimony of the witness Naylor.

(Testimony of George F. Naylor.)

lor. I offer to prove that if the witness had been allowed to answer appropriate questions along the lines indicated, to which objections were sustained, and other questions along the same line, that he would have testified as follows:

That some time in late 1944 or in 1945 he owned and operated a boat known as the Tropic Bird; that that boat went out on a trip with a skipper by the name of Andy Brockett, came back with a load of fish and with some damage to the net as a result of the fishing operations; that all of the fish caught on that trip were delivered to him, and that the skipper and the men then requested payment immediately upon delivery of the fish for the fish which had been delivered; that Mr. Naylor advised them that he would not make any payments for the fish until the nets were repaired; that the men in the crew then went to work—I am referring to the men in the crew on the Tropic Bird—they went to work on [1751] Mr. Naylor's premises repairing the nets, and spent approximately two weeks in repairing those nets, full time; that at the end of that period the men were paid for the fish which had been delivered about two weeks before, and that withholding tax was withheld from the payments on the basis that it represented payments for work of a period of approximately two and a half weeks, the fishing trip being one-half week and the period of repairing nets being about two weeks.

That completes my offer of proof.

The Court: Very well.

Mr. Margolis: I want to add one more thing to the offer of proof. I want to add that if further appropriate questions were allowed to be asked, that the witness would have testified that this procedure was not an unusual procedure, and that he frequently required fishermen to follow the same procedure. [1752]

The Court: The objection to the question yesterday was sustained on the ground it was immaterial. That will be the ruling of the Court today.

* * *

(The following proceedings were had in the presence of the jury:)

* * *

FRANK AGLIANO

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Rubin:

Q. Mr. Agliano, what is your business or occupation? A. Cigar making.

Q. Prior to your being a cigar maker, what were you engaged in doing? A. Cigar making.

Q. During 1946 did you ever have any occupation other than that of cigar maker? A. Yes.

Q. What was that occupation? [1765]

A. Employed by the union on a temporary basis.

Q. What union?

Mr. Garrett: May I have that answer read?

(Testimony of Frank Agliano.)

The Court: He said he was employed by the union on a temporary basis.

Q. (By Mr. Rubin): What union?

A. The San Diego branch of the International Fishermen's Union.

Q. Of what local? A. No. 36.

Q. When did you enter upon your employment with that union, approximately?

A. I don't remember whether it was the middle of June, the end of June or the early part of July. I don't quite recall very well.

Q. Do you recall having served upon your a subpoena duces tecum? A. Yes.

Q. That is a paper by the United States requesting that you produce certain documents?

A. That is right. [1766]

* * *

Q. What was your capacity there in Local 36 temporarily?

A. Just take charge of the office and whatever there was to transact during that period, tending to members' requests or collecting dues—anything normally carried on in the office.

Q. Were you the only employee there?

* * *

The Witness: I don't recall. [1767]

The Court: Was there somebody else working there besides you?

The Witness: For the local?

The Court: Yes.

(Testimony of Frank Agliano.)

The Witness: For that particular branch?

The Court: Yes.

The Witness: No.

Q. (By Mr. Rubin): Did you produce certain documents pursuant to the subpoena that was served upon you? A. Yes.

* * *

Q. Where did you get these records that you produced?

A. In the office, the union office.

Q. Were they the records of the union office?

* * *

The Witness: Yes, what was there available.

* * *

Q. (By Mr. Rubin): Calling your attention to Government's Exhibit 508 for identification I will ask you if that is one of the documents that you produced pursuant to the subpoena duces tecum.

A. I guess so. There is my initials on it.

* * *

The Court: When you say you guess so, do you mean yes or no or do you mean that is your best recollection?

The Witness: That is to the best of my recollection, because I didn't go through each of these letters when I was asked to bring them over.

The Court: All right.

Mr. Garrett: Are those initials in your handwriting, Mr. Agliano?

The Witness: Yes.

(Testimony of Frank Agliano.)

The Court: The initials on the back?

The Witness: Yes. [1770]

* * *

Q. Mr. Agliano, you stated that you produced the documents that were available, is that correct?

A. That is right.

Q. Now where did you bring those documents?

A. I brought them to the Federal grand jury room. [1771]

* * *

Q. (By Mr. Rubin): Before you brought them into that room, did you put any marks on the back of them?

A. I don't recall.

Q. Now using this document to refresh your recollection and calling your attention to the initials in the upper right-hand corner——

The Court: Which one is that?

Mr. Rubin: No. 508.

* * *

Q. Does that refresh your recollection as to whether or not you put your initials on those documents?

A. Yes. I recognize the initials but I don't recall where it was placed. You are asking where, what room or which place I was putting them on.

Q. Do you know what building it was?

A. I think it was here, wasn't it, in your office?

Q. All right. We will let the answer stand as it is. [1772]

* * *

(Testimony of Frank Agliano.)

Q. (By Mr. Rubin): Now calling your attention to Government's Exhibit 503 for identification, I ask you the same question.

* * *

Q. I show you Government's Exhibit No. 503 and calling your attention to the reverse side thereof I will ask you if that also is one of the records which you produced. [1773]

* * *

A. Yes, the initials are there.

The Court: You say the initials are there. Did you produce that document?

The Witness: Well, your Honor, I didn't read each and every one of these before I brought them in so that I could tell.

The Court: Your initials are on the back of that document?

The Witness: Yes.

The Court: Does that signify to you that that is a document that you produced?

The Witness: That passed through my hands.

The Court: That is a document that you produced?

The Witness: That went through my hands; yes.

The Court: What do you mean, it went through your hands?

The Witness: I must have had them in order to sign them.

What I mean, your Honor, is this, I didn't read all these documents.

(Testimony of Frank Agliano.)

The Court: Counsel isn't asking you about that now. All he wants to know is whether or not that is the document you brought up to his office in response to that subpoena duces tecum.

The Witness: The initial is there; yes. [1774]

Q. (By Mr. Rubin): Does that indicate that that is the document that you produced?

* * *

A. I guess so. All these that I brought I was asked to put the initials on.

Mr. Rubin: All right.

Q. Now would the same answer be true with respect to No. 504 for identification? [1775]

* * *

A. It looks like my handwriting.

* * *

Q. (By Mr. Rubin): I call your attention to Government's Exhibit 505. Look at the front side and then look at the back side, and then tell me whether or not—tell the court and jury whether or not that is one of the documents you produced at that time.

* * *

A. Yes. [1781]

* * *

Q. (By Mr. Rubin): Calling your attention to Government's Exhibit No. 45, for identification, which consists of a series of cards, most of which are white, a few of which are salmon colored, bearing on their face "Application Form International Fishermen & Allied Workers of America, Local

(Testimony of Frank Agliano.)

#36," and ask you if you produced those cards pursuant to the subpoena duces tecum.

Mr. Andersen: What is the identification on them?

Mr. Rubin: No. 45.

A. Yes. [1782]

* * *

Q. (By Mr. Rubin): I call your attention to—well, let's take the card referring to Mike Romero, Jr., headed "Registration Blank Local No. 36, Newport Beach, California." First line: Applied at San Diego, California,—and I call your attention to the lower right-hand corner of that card, wherein it says, "Book Number," and then there is a number written in. Now, tell us, Mr. Agliano, what that number represents. [1783]

* * *

A. That number is the book number issued to the applicants.

* * *

Q. (By Mr. Rubin): During the time you acted in the capacity which you testified to in San Diego, was there ever a book number given to any person who was not a member of the organization?

* * *

A. The practice that I followed there was to issue numbered books to the applicants. The union books are numbered, and whenever an applicant applies and pays whatever the dues happen to be he is given or issued a book, which is numbered.

(Testimony of Frank Agliano.)

Q. (By Mr. Rubin): Was a book ever given to someone during the time you were acting in the capacity you testified to, who wasn't a member?

* * *

A. I don't recall of issuing a book unless an applicant fills out the application and pays his dues.

* * *

Q. (By Mr. Rubin): Let me ask you this: when an applicant pays his dues, do you give him any document in exchange for what he pays you?

* * *

A. We issued receipts any time a payment is made.

Q. (By Mr. Rubin): When the initialed receipt is given is any notation placed upon this card?

* * *

The Witness: Well, I don't recall that I followed it. It was my procedure of marking those cards whenever they made any payments at the time that I was there.

Q. (By Mr. Rubin): What number did you put on those cards when you marked it?

A. The receipt number and the book number, the membership book number.

Q. Mr. Agliano, who was the president, if you know, of the San Diego unit of Local 36 during the time you performed the function to which you have testified?

* * *

A. I believe Pete Carrao. [1789]

* * *

(Testimony of Frank Agliano.)

Mr. Rubin: At this time, your Honor please, we offer Government's Exhibit No. 503 for identification into evidence.

Mr. Garrett: Objected to on the ground that it is incompetent, irrelevant and immaterial, and there is no proper foundation laid.

The Court: Go ahead with the rest of your offers. [1802]

Mr. Rubin: At this time, if your Honor please, we offer Government's Exhibit 508 for identification into evidence.

Mr. Garrett: Same objection; incompetent, irrelevant and immaterial, and particularly no proper foundation laid in the case of No. 508 for identification. Also hearsay.

Mr. Andersen: We join in the same objection.

The Court: I understand that all the objections that Mr. Garrett has been making have been made on behalf of all the other defendants.

Mr. Andersen: There is no showing, may it please the Court, that the original of any such letter was mailed. What we have here purports to be a copy.

Mr. Rubin: Under Section 695 of Title 28, if your Honor please, the foundation has been shown.

The Court: State all of your offers. You have one more or two more?

Mr. Rubin: No. 505 we offer into evidence at this time.

The Court: And No. 45?

(Testimony of Frank Agliano.)

Mr. Rubin: And the cards; yes. [1803]

The Court: All right.

Mr. Rubin, do you wish that marked for identification?

Mr. Rubin: Your Honor please, we will offer it directly into evidence as Government's Exhibit next in order.

The Clerk: No. 41.

(The document referred to was marked Government's Exhibit No. 41 for identification.)

* * *

The Court: You have offered now, Mr. Rubin, 505—what numbers? 503, 505, and——

Mr. Andersen: Are they going in under those numbers?

The Court: Yes. 503, 505 and 508. You are not offering 504?

Mr. Rubin: Not at this time.

The Court: Which one is 504? Let me see it.

(The document was passed to the court.)

The Court: Very well.

Mr. Rubin: And the cards, if your Honor please.

The Court: 45?

Mr. Rubin: 45.

The Court: And 41?

The Clerk: Is that in evidence?

The Court: It has been offered.

Mr. Andersen: Exhibit 41, what is it?

The Court: The subpoena duces tecum.

These numbers will be used, because they indicate by the serial 500, San Diego.

Will this conclude your direct examination of this witness?

Mr. Rubin: Yes, your Honor.

Mr. Garrett: Take these proffered documents in order, which are proffered for entry into evidence, if your Honor please, the first is 503——

The Court: The first is 41, the subpoena duces tecum.

Mr. Garrett: Yes, No objection to that.

The Court: All right. It is admitted in evidence.

(The document referred to was received in evidence and marked Government's Exhibit 41.)

* * *

Mr. Rubin: At this time, if your Honor please, I think the stipulation should probably be read to the jury. Would your Honor read the stipulation to the jury?

The Court: Yes, I have read the stipulation. I think that it may be read to the jury, and I understand you want to offer some objections too—you are going to offer in evidence all of these documents?

Mr. Rubin: If your Honor please, there are certain documents concerning which parts of which we will offer in evidence and other documents which we will offer in toto. These documents that I am about to offer——

The Court: What I am getting at is—and we are proceeding after 12:00 o'clock today because I

understood this situation was going to arise—that you desired some time to argue your objections.

Mr. Kenny: Your Honor, one objection, obviously: if a part of a document is offered we want the whole document in. Your Honor has ruled with us on that. If counsel is going to [1810] reopen that, we want time.

The Court: Let's argue that when we can have a lot of argument this afternoon.

Read this stipulation now and make your offer. Here is the original.

Mr. Rubin: I might state, if your Honor please——

The Court: I think you could probably omit the numbers in reading your stipulation. Refer to them as various numbers which will be called to the jury's attention at the appropriate time.

Mr. Rubin: Yes, your Honor, that might save time.

This is captioned: "In the District Court of the United States, for the Southern District of California, Central Division.

"United States versus"—and then all of the defendants are named. "Criminal No. 18842.

"Stipulation

"It is hereby stipulated by and between the United States of America, hereinafter referred to as the Government, and such defendants as are represented of record by the attorneys who have executed this Stipulation, as follows:

"1. That all documents hereinafter referred to

in this Stipulation, shall be deemed authentic and no foundation testimony or common law or statutory proof of their authenticity shall be required of either the Government or the defendants and any proof of authentication is hereby waived; that such documents are what they purport to be on their face; that wherever a written signature appears on any of said documents, such signatures shall be deemed to have been signed by the person whose signature it purports to be.

“2. It is further stipulated that no objection will be made by either the Government or the defendants who are party to this Stipulation on the grounds of lack of foundation or insufficient identification of each document as being what it purports to be; all other objections are reserved.

“3. Without limiting the generality of the foregoing language, the above Stipulation shall apply to the following Government Exhibits for identification:”

Followed by a series of numbers which have been marked for identification in this case.

“4. In addition to the foregoing general stipulation it is further stipulated as follows:

“(a) That Government’s Exhibit 206 for identification are minutes of a ‘Strike Committee Meeting’ of defendant Local 36, San [1812] Pedro Unit, dated May 27, 1946.

“(b) That Government’s Exhibits Nos. 310, 311, 312, 313, 314, 316, 317, 318, 319 and 328

for identification are minutes of 'Strike Committee Meeting' of Newport Unit of Local 36.

"(c) That the same person who prepared Government's Exhibits 305 and 321 for identification also prepared Government's Exhibits Nos. 301, 302, 303, 304, 307 and 308 for identification.

"(d) That Government's Exhibit No. 401 for identification is the minutes of general meeting of the Redondo Unit of defendant Local 36, dated May 27, 1946.

"(e) That Government's Exhibit No. 402 for identification is the minutes of the Santa Monica Unit of defendant Local 36 dated March 24, 1946."

And the stipulation is signed and entered into by Katz, Gallagher & Margolis, Gladstein, Andersen, Resner, Sawyer & Edises and Robert W. Kenny, by Ben Margolis, attorneys for all of the defendants except Floyd Sherman, and by William C. Dixon on behalf of the United States of America.

The Court: And bears my approval.

Mr. Rubin: And bears the Court's approval.

The Court: Do you offer the documents in evidence?

Mr. Rubin: If your Honor please, that is the foundation [1813] testimony. The documents themselves, I can offer this particular portion in evidence and specify the numbers. Various of the other documents will be offered only in part; we do not offer the entire document; and in accordance with your

Honor's thoughts in the matter, perhaps we can take up those documents seriatim out of the presence of the jury and argue them at that time. These we can offer now.

The Court: In connection with offering these documents in evidence, you will not have any further testimony in connection with your offer?

Mr. Rubin: In connection with the foundation testimony, that is correct, your Honor. [1814]

* * *

(The following proceedings were had outside the presence of the jury.)

* * *

Mr. Rubin: We will offer the subpoena duces tecum returnable on the 24th of July 1946 to Local 36, San Diego Unit, as part of Government's Exhibit 41.

Mr. Andersen: Of course those were grand jury subpoenas, weren't they?

Mr. Rubin: That is right.

The Court: Admitted. [1820]

(The documents referred to were received in evidence and marked Government's Exhibit No. 41.)

Mr. Andersen: What number will that be?

The Court: They will both be 41.

* * *

Mr. Margolis: In connection with the testimony of Mr. Naylor, your Honor, although I have made previous motions to strike I would like to refer to specific portions of the transcript and ask your Honor to read them.

The Court: What page?

Mr. Margolis: Page 1600, if your Honor please. I want at this time to move to strike in its entirety and separately each and every sentence and word beginning at page 1600, line 8, to and including 1601, line 22.

After your Honor has had an opportunity to read it, I would like to make a very brief statement.

The Court: I have read it. [1821]

Mr. Margolis: Now, if your Honor please, in his testimony at line 11 Mr. Naylor said: "They explained to me that the dealers in San Pedro had been presented with an agreement, I believe it was, or the dealers had written a letter to the union stipulating certain things."

Now that, it is our contention on the motion, and I will make an offer to prove, refers to the letter which was attached to or inclosed with Government's Exhibit 37, and here he is testifying concerning a conversation about the contents of a letter which the Government has not produced, although they had it in their possession, and which we requested that they produce. Then we will make an offer of proof to show that the letter is quite different.

The Court: He is testifying here as to what they said.

Mr. Margolis: Yes, your Honor.

The Court: The letter might have said anything, but this is his conversation. This is what he says their conversation was with him: "They explained to me that the dealers in San Pedro had been presented with an agreement, I believe it was, or the dealers had written a letter to the union stipulating

certain things that they—I believe that the union would have a representative.” Now they said that a letter had been written. That is what he is testifying here.

Mr. Margolis: Yes, but we would have been able to show that when he said they said, they at the same time handed him [1822] the letter that was inclosed here.

The Court: You can still show that. [1823]

Mr. Margolis: Well, the government has the letter, and they refused to produce it.

The Court: They are not relying on the letter; they are relying on the conversation. At least, that is all there is in the record to rely on.

Mr. Margolis: Well, if your Honor please, I submit that they were talking with regard to Exhibit 37. I would like to make as part of my motion to strike,—I would like to make an offer of proof. Maybe I haven't made myself clear. The point is if we had the letter to cross-examine—they are examining him directly with regard to a conversation in connection with a particular document. If we had the entire document with which to cross-examine him we could have shown that the conversation was different. And here we are bound by a conversation which goes around and is in connection with a certain letter, and we are effectively deprived of the right to cross-examine this witness with regard to the true contents of the letter. And we will offer to prove that in the event that letter were produced and we were given an opportunity to continue our cross-examination upon the basis of the production of

the letter—by that I mean the enclosure concerning which there has been so much discussion—that the witness would have changed his testimony and would have said that the conversation concerned solely an arrangement to fix prices on a trip by trip basis, so that when a fisherman went [1824] out fishing he would know in advance of the trip how much he was going to get for his fish. And, further, that this was precisely the practice which he has been following in the past.

We are deprived of our opportunity to cross-examine him without that letter to do that.

The Court: I don't think so. The motion to strike is denied. The offer of proof is rejected.

* * *

Mr. Rubin: At this time we offer into evidence Government's Exhibit No. 238, for identification.

Mr. Andersen: What is it?

The Court: Minutes of joint executive board meeting, Southern California Fishermen—do you have your list there? [1828]

Mr. Andersen: We have a list, and we also allegedly have a complete copy, photostatic copies of all of them, but 238 we don't have. There are about eight or ten documents that we just don't have.

The Court: 238 was the one that was offered by some other witness——

Mr. Rubin: Yes.

The Court: That you asked Miss Evanisevich about. Suppose you just make your offer for the whole list, then you can check them off. You have your lists, haven't you?

Mr. Margolis: Yes, but——

The Court: He is going to offer that in toto. He is going to make his offer of all of the exhibits that he offers in toto.

Mr. Andersen: I don't believe that will work out, Judge.

The Court: Then you can object to them in toto.

Mr. Andersen: We will just have to object to them all.

Mr. Margolis: We will have to object to each individual one, your Honor.

The Court: I know. But if he makes his offer now, then you can come up and say: I object to No. 238 because, because, because.

Mr. Andersen: I don't believe they are going to offer all of them, your Honor.

The Court: I know he is not going to offer all of them, [1829] but he says he is going to offer now those on the list which he expects to offer in toto.

Let's try it this way and see how we get along.

Mr. Kenny: I think we can get along.

The Court: Then if he does, he can hand them up to me, and when you make your argument I will have it up in front of me. As it is now we will be passing documents back and forth all afternoon.

Mr. Rubin: I might state, further, because of the stipulation we have had to endeavor to reorganize our documents during the noon hour. We have gotten almost finished, and my accountant and my associate colleague is endeavoring to do the best he can to finish them in this period.

I now offer in toto the following documents heretofore marked for identification into evidence as the Government's Exhibits next in order respectively:—

The Court: They will take the same number that you have in the stipulation.

Mr. Rubin: Yes, your Honor. No. 207.

The Court: Have you got a list of them there?

Mr. Kenny: All right.

Mr. Rubin: No. 211; No. 212; No. 213; No. 214;—

Mr. Kenny: Can you go just a little slower?

Mr. Margolis is pulling our duplicates.

Mr. Rubin: 215. [1830]

The Court: 215.

Mr. Rubin: 216; 217; 219; 220; 225; 227.

The Court: Just a moment.

Mr. Margolis: Where is 227, Mr. Rubin?

Mr. Kenny: Minutes of strike committee meeting.

Mr. Rubin: Of June 15, 1946.

The Court: 227. That is the first one on the list.

Mr. Rubin: 237, 236, 206, 203, 231.

Now on the 400 series, 401, 402.

Mr. Kenny: That is one we haven't a copy of.

Mr. Rubin: 403, 405, 404, 406.

The Court: You are going to offer all of 406-A?

Mr. Rubin: Yes, your Honor.

The Clerk: That is 406 and 406-A, both?

Mr. Rubin: Both, that is correct.

I might state that 406-A is not on the original list that was typed. It was attached to 406 and discovered later. I was telling counsel about it.

The Court: All right.

Mr. Rubin: 411.

Mr. Kenny: 411 is another one that we have no copy of.

Mr. Rubin: 332, 333, 334.

Mr. Kenny: 333 we have no copy of. Maybe we can find a copy.

Mr. Margolis: We don't have 333 or 334. It isn't in this bunch.

Mr. Rubin: Those are the documents, if your Honor [1832] please, that are offered in toto with the exception of the Newport unit documents, and at this point we haven't found any that we desire to offer in toto.

The Court: With the exception of the Newport unit?

Mr. Rubin: That is right.

The Court: What numbers are they, 500?

Mr. Rubin: No. Those are No. 300, your Honor. The 500 are the San Diego unit.

The Court: You mean you are not ready to complete your offer in toto?

Mr. Rubin: That is correct. I doubt very much if there will be any more in toto offered from the Newport minutes.

Mr. Kenny: Just so we will keep abreast of each other, you are offering 333?

The Court: 332, 333 and 334.

Mr. Kenny: As to 333 we have no copy and 334 no copy.

Mr. Andersen: When I was upstairs with you you told me you didn't want those.

Mr. Rubin: No.

Mr. Kenny: It doesn't make any difference. We will get a copy.

I think perhaps we should get it clear. What was it about the Newport unit, was that in relation to 333 or 334?

Mr. Rubin: No, I am referring now to the Newport minutes. The probabilities are that there will be no Newport [1833] minutes that will be offered in toto.

The Court: The Newport documents are Serial No. 300?

Mr. Rubin: That is correct.

The Court: And Mr. Dixon is checking them now?

Mr. Dixon: That is right.

The Court: To see whether or not you want to offer them in toto?

Mr. Dixon: That is correct.

The Court: With your offer of 333 and 334 does that complete your offer of documents in toto?

Mr. Rubin: As to this particular series. We are going to offer all of the cards in toto also.

The Court: Are they numbered?

Mr. Rubin: Yes, your Honor.

The Court: Let us make the offer now. Are they on this list?

Mr. Rubin: Yes, your Honor. No. 42, 43 and 44.

The Court: You have offered 45 in toto and 503, 505 and 508.

Mr. Rubin: 505 has been withdrawn, I believe.

Mr. Andersen: 505 was withdrawn, your Honor.

The Court: 503 and 508?

Mr. Rubin: That is correct.

The Court: Now you will have further foundation on 504 and 505? [1834]

Mr. Rubin: 503 and 508, if your Honor please, we submit has sufficient foundation.

Mr. Kenny: Those are the only two of the 500 series you are offering in toto, is that correct?

Mr. Rubin: I think that is correct. Just a moment until I check.

Strike 502 out. That is No. 28, which we used before.

The Court: It is in?

Mr. Rubin: It is in for identification only.

Mr. Andersen: You mean 28 and 502 are the same?

Mr. Rubin: That is right. So we will take 502 out.

Those are all the documents, if your Honor please.

The Court: Have you finished, Mr. Dixon, on your Newport?

Mr. Dixon: Not yet, your Honor. There is a possibility that there may be two or three. I haven't run across any yet.

The Court: All right.

Now on the other documents, you are going to offer portions of them?

Mr. Rubin: Yes, your Honor.

* * *

The Court: And I think we could probably save a great deal of time if you sit down with the documents and mark out the portions you want to offer

so we can make a sequential statement without interruption and then you can start in and make your argument.

Mr. Rubin: We might use a red and green pencil. We have hesitated mutilating these documents prior to this time.

Mr. Margolis: We have no objection to that.

The Court: Anything that will expedite the proceedings and will not mutilate the documents.

* * *

Mr. Rubin: I have a few more documents, if your Honor please, to be offered in toto.

I would like to read their identification numbers at this time. Document No. 27.

Mr. Margolis: Does that have a number?

Mr. Rubin: That is one of the sequence numbers.

Mr. Margolis: Do we have a photostatic copy of that?

The Court: It isn't in the stipulation.

Mr. Margolis: It isn't included in our stipulation, is it?

Mr. Rubin: No. The foundation to that was laid by Miss Evanisevich.

The Court: 27 was passed around a long time ago.

Mr. Rubin: And No. 28, also.

The Court: 27, 28, 218 and 252 by Miss Evani-sevich.

Mr. Rubin: We also offer 208 and 218.

The Court: Wait a minute.

Mr. Rubin: These are in toto on the stipulation.

The Court: 208——

Mr. Kenny: I would suggest that it might be better, Mr. Rubin, if you offer the ones that are included within the stipulation first, and then we will have that all checked off, and then you can back up to 27 and the others.

The Court: 218 in is the stipulation. Is 208? Yes, at the bottom of the central stack of figures. And 218 is [1837] the third down from the top on the right-hand stack of figures.

Mr. Rubin: 311 and 312.

The Court: Wait a minute. I can't find 312 either. It is not on the stipulation. That was marked, for identification.

That is on page 4 of the stipulation, subparagraph (b). That is 310, 311, 312.

Mr. Rubin: 314, 317.

The Court: 314, 317.

Mr. Rubin: And 328.

The Court: And 328.

Mr. Margolis: These are offered in their entirety?

Mr. Rubin: Yes.

Mr. Kenny: Do you want to introduce 27 now, or later?

Mr. Rubin: That is up to the court. I thought the court wanted us to offer all the documents in their entirety. If it would be more convenient to the court for the purpose of this proceeding to withhold the offer of 27 and 28 until after the stipulated documents have been considered, I of course will do that.

The Court: Let's see 27 and 28. They are not in the stipulation?

Mr. Rubin: No, your Honor.

Mr. Kenny: They are not covered by the stipulation. We may be able to work them out, but I am just trying for clarity— [1838]

If we were on the stipulated matters we could make the record a little more clear.

The Court: Yes. All right. We will hold 27 and 28. Now, what about your partial offer? [1839]

Mr. Rubin: With respect to the 200 series, if your Honor, please, these documents are offered——

The Court: All the remainder of the 200 series indicated in the stipulation?

Mr. Rubin: No. I am going to refer now specifically to those documents in the 200 series which at this time we desire to offer in evidence only partially.

The Court: And which are all of the other documents listed in the stipulation not offered in toto?

Mr. Andersen: Not necessarily.

Mr. Rubin: Not necessarily.

The Court: All right.

Mr. Rubin: Does your Honor desire at this time that we point out the specific items?

The Court: Let me see it.

Mr. Andersen: I think it would be better to make the partial offer first and then take them afterwards.

Mr. Rubin: That is all right with me.

(The document referred to was passed to the Court.)

The Court: All right. Make your offer in that fashion.

Mr. Rubin: Very well.

We offer documents Nos. 201, 205, 204, 202, 224, 226, 228, 230 and 233.

Now as to the documents just enumerated, if the Court please, we desire to offer, as part of the Government's case, [1840] only such portions as has been indicated thereon with a red check on the left side margin.

The Court: The first document that you showed me, you had a check on the left side of several names.

Mr. Rubin: That is correct.

The Court: Now what you mean is that you are offering those documents as against those named persons only, or as against all the defendants?

Mr. Rubin: As against all the defendants. We are offering the document as to all defendants in accordance with the first ruling of the Court at the outset of the case.

The Court: Yes, but as to the name.

Mr. Rubin: Specifically with respect to this document, it may be deemed that we are interested only in those names which have been marked with a red check.

The Court: In other words, you are offering that document to show that those persons——

Mr. Rubin: Were present.

The Court: ——whose names are checked with red check to the left of the names were present?

Mr. Rubin: That is correct.

The Court: And that those things which are indicated in the paragraphs with the red check at the left were done or said?

Mr. Rubin: That is correct, that they are part of the [1841] minutes, and under the rules we believe——

The Court: As to each one of these in the 200 series?

Mr. Rubin: That is correct.

The Court: And counsel for the defense, do you have your red checks?

Mr. Kenny: No, your Honor, I think perhaps we can come to grips with the central question now.

The Court: You mean you are not advised what those checks are?

Mr. Kenny: Oh, yes. We have seen them. There is no way to make a record of them now, and I thought since your Honor has already ruled, as we gather it, that the whole document must be in and not a portion——

Mr. Rubin: Just a minute. That is an assumption.

Mr. Kenny: I said we assumed that to be the case. But before we get into requiring counsel to make a record, because a reviewing court never would know what a red checked document was——

The Court: Well, the original document will be there, and it is our custom now to send up the original exhibits.

Mr. Kenny: It would have to be marked with much greater particularity than it is now. The reason we have no marks on them is, of course, that

we are urging that if any part of the document goes in the whole document, the whole transaction must come before the court, so I thought we could argue at this time that central question. Then if your Honor should be disposed to rule in favor of the government, then we should work out a means of making the record definite and certain as to what is to be omitted; and then also should your Honor rule in favor of the government, there will be certain portions that we will then argue should be omitted. But we thought that Pandora box of making definite and particular, and what our own requested omission would be, might never be opened at all if your Honor adopted the ruling which we conceive to be clearly the law, and that a document introduced for any purpose is admissible for all purposes.

Mr. Rubin: Is this an argument or an objection?

Mr. Kenny: I am trying to clarify the thing to show where we are in the matter.

The Court: I think I get your point. I think that I would rather have you make your whole offer. Now, for the purposes of the records here, and among us, we are able to determine what is meant when we say checked in red, because [1843] that is checked on the original exhibit, and you have been advised.

Mr. Rubin: Of the 200 series.

The Court: Yes, of the 200 series. Is there some other identifying characteristics on the other series?

Mr. Rubin: Mr. Dixon will make the offer on the other series, and that will be our complete offer.

The Court: Will they have the same identifying characteristics?

Mr. Rubin: These are typed, if your Honor please, and these are susceptible of this particular type of identification. The others are handwritten, and in order to clarify it Mr. Dixon will make the other parts in the 300 series.

The Court: Here is what I thought: in the event I overrule your objections and admit documents only partially, then they are admitted and counsel can read the portion into the record that is admitted. If the whole document goes in, then it won't be necessary to read it all in the record, it can be saved for such time as it goes to the jury. Or in the event a portion is admitted by the government—in the event I hold that—and that you are entitled to move the admission of the rest of it, which I deem to be the law, that they can admit part of it providing I have the whole document here in front of me to see everything that is there, that I can overrule your objection and let them admit a part of it, [1844] and then if you wish to put the rest of it in, in that event when the time comes, if it comes, then you can read that portion to the jury.

Mr. Garrett: May I interject a moment here, your Honor? Am I mistaken in believing that where a party offers a document and proposes that only a part thereof be received in evidence, that the

burden is upon him of showing the court reasonably, something I haven't heard here so far, a reason why a portion rather than the whole of the document is only moved for admission? I have heard no statement.

The Court: Obviously when you offer a document you offer that portion which is material or which he deems to be material to his side of the case. Then if I have the whole document before me I can determine whether or not that is or isn't.

Let's see if we can get on with our offer. In other words, I would like to get the record of the offer made now, because once we get to arguing the matter here we are going to jump from minute to minute and letter to letter, and the record is liable to become very confused.

Mr. Kenny: I think perhaps we can, for the record, if your Honor should so rule,—it will require some mechanical work to make that clear, and of course we will also have to do some mechanical work on our particular omissions that we are seeking. We hope that doesn't have to come to pass.

The Court: He has exhibited to me the 200 series. I noticed the red checks opposite the names, as well as opposite the paragraphs, so that for the purposes of the present discussion that is a sufficient identification, but it would not be I don't suppose for the purposes of the record.

Mr. Kenny: That's right.

The Court: When we speak of the record, of course we speak with the most tender concern for

those who sit above us and review the conduct and acts, and look for and find the many mistakes the trial judges make.

Mr. Kenny: Of course, after this offer is made we will have specific objections to, perhaps, all of the documents, or at least certain ones, but I won't further interrupt counsel's offer at this time.

The Court: Mr. Dixon?

Mr. Dixon: The Government offers in evidence those portions of documents numbered 301, 302, 303, 304, 307, 310, 313, 320, 321, 322, 409 and 504, which are not enclosed with red pencil marks.

The Court: Which are the ones not enclosed?

You offer all those portions of those documents which are not enclosed in red pencil?

Mr. Dixon: That is right.

The Court: Have you seen those?

Mr. Margolis: We have.

The Court: Very well. We understand your motion.

Now does that complete your offer?

Mr. Dixon: That does, your Honor.

The Court: Let me see your exhibits.

Mr. Rubin: Here are those offered in toto.

(The documents referred to were passed to the Court.)

The Court: Are those arranged in numerical order now?

Mr. Rubin: Those are offered in toto and these are the partials.

(The documents referred to were passed to the Court.)

The Court: Has everybody copies here so that we know what we are talking about?

Mr. Kenny: We almost have copies. There are a few that we don't have. [1847]

Mr. Garrett: I will refer to Mr. Margolis' copies, except at the start of the consideration, the exhibits which are identified only by the stipulation, possibly my need for attention to the contents of them may be resolved by a ruling upon my objection that there is no foundation as to the defendant Sherman.

The Court: I will examine all the documents. Your offer is now made?

Mr. Rubin: Yes, your Honor.

Mr. Kenny: And I think that our objection is made.

The Court: I understood you wanted to extend your objection.

You mean on that one ground of objection?

Mr. Kenny: That is the first objection, as to the partially offered documents.

The Court: Very well.

In Wharton's Criminal Evidence, Section 785, 11th Edition:

"A question may sometimes arise as to whether or not the entire document should go in evidence by the party producing it. This is a matter that, if questioned, ought to be left entirely to the discretion of the trial judge. The better rule is that a party offering a document should offer only that part relevant to the ques-

tion at issue, leaving [1848] to the other side to use the remainder afterwards."

And under the California law the other party can offer in evidence the remainder of the document, if he desires it, either at that time or subsequently.

"And when one writing refers directly or indirectly to another for a fuller description, the admissibility of the first writing involves the admissibility of the second writing."

In other words, that seems to be the rule.

Mr. Kenny: Yes. I call your Honor's attention to that last sentence you read. You will find upon examining these that many of the writings, that is, one paragraph will be unintelligible if taken out of its context and not read with the paragraphs both before and after. That I think is the heart of the matter. If there were something that was entirely——

The Court: I will have to resolve that in each instance.

Mr. Kenny: That is just about it.

The Court: I will have to resolve it by reading each document.

Mr. Kenny: Precisely, your Honor.

The Court: In connection with the other exhibit here I was unable to resolve it because I didn't have the letter in front of me. [1849]

Mr. Kenny: That is right.

The Court: So that will be my ruling, that they can be admitted in part without admitting them in

toto, although the other side may offer the remainder of the documents in evidence if they choose as the ruling may be made.

Mr. Rubin: As a part of their case.

The Court: Naturally, if they are offering the exhibits in evidence.

Mr. Dixon: May it please the Court, I think Government counsel should state for the record at this time the reason, although your Honor has already ruled on it, why the proffer or the offer is made in this manner.

I believe an examination of the documents submitted for partial admission will show that at least in our opinion there are many matters referred to in those documents which in my opinion, are not only irrelevant to the issues in this case but which also in a few instances refer to matters which the Court has already ruled immaterial.

The Court: You are entitled to limit the scope of your cross examination by limiting your direct examination.

Mr. Dixon: That is right.

The Court: And by the same token you are entitled to limit an exhibit that is offered to the particular portions that you deem to be material, subject to the ruling of the Court. [1850]

Mr. Dixon: That is right. It is within the discretion of the Court, your Honor, as we view it. And we further agree with the position taken by Judge Kenny that anything that is offered in that manner may be explained, if there is any ambi-

guity in what is offered, from any of the contents of the rest of the document at the request of the defendants.

We do not, however, regard the rule as going so far as to permit the defendants to put in as their part of the case matter which we regard as irrelevant and immaterial, although a part of the document, and that is the reason for offering them only partially so that that part which is regarded as material may be presented to the Court and to the jury. [1851]

Mr. Kenny: I take it the court is finally going to read these documents before ruling as to each one of them. That is, your general ruling was——

The Court: That's right. I have to determine it from the document itself, and from the whole evidence in the case and the issues as framed whether or not, for instance, on 201, the first document here offered partially, whether or not the things offered are material to the government's case, whether or not they are the only things that are material to the government's case, if they are admitted—that is to say, if they are admitted in evidence, whether or not the government should be compelled to admit the other things as well as part of their exhibit.

Mr. Kenny: Plus the other thing, that is, if the excerpt taken out of its context doesn't make sense——

The Court: That goes to the second statement that I made.

Mr. Dixon: That's right.

The Court: That is part of the consideration from which one arrives at a conclusion whether or not the remainder of the document should or shouldn't be admitted as being material or immaterial.

Now, these documents that are offered in toto, the numbers of which I will not review, but which I have together—I am just glancing through them—they appear to be strike committee meeting minutes, is that correct? [1852]

Mr. Rubin: I think most of them are. There may be a few others that are not. Practically all of them are.

The Court: 236 does not, 203—I thought you said you arranged these in order. 206 is in for identification now; 236, 203, 231 appear not to be minutes.

Mr. Rubin: 206, if your Honor please, is covered by paragraph 4(a) of the stipulation.

The Court: 236.

Mr. Rubin: Pardon me.

The Court: 203 and 231 appear not to be minutes. They appear to be letters. One is a notification.

Mr. Rubin: There is testimony in the record with respect to certain of those letters, if your Honor please, from Miss Evanisevich.

The Court: All right. How do you wish to present your objection—to those offered in toto, or—I suppose you have a general ground of immateriality to everything?

Mr. Margolis: Yes, we have special objections to some of them. Just to give your Honor an example, we can take the first one which is offered in toto, No. 238.

Does your Honor have a copy of that?

The Court: Yes, I have, but it is not in order.

Mr. Margolis: I have the exhibit here.

The Court: The original?

Mr. Margolis: Yes. [1853]

Mr. Margolis: If your Honor wants me to indicate generally, without indicating as to which of the exhibits they would apply,—

The Court: Yes.

Mr. Margolis: We would object, of course, on the ground that all of the testimony concerning activities in support of the attempt to obtain the agreement are irrelevant and immaterial; that they are cumulative, and at this point unnecessary to establish that there was an attempt to obtain an agreement. That is really not an issue in this case.

That as to some of the minutes, there will be portions that mention defendants who were not present at the meetings, or it does not appear that the defendants were present at the meetings, and as to them it would be hearsay. There are portions of the minutes which are simply unintelligible without explanation, and therefore are immaterial and irrelevant as offered, and that generally they are outside of the issues [1857] of the case.

By making this general statement, your Honor, I merely am trying to—

The Court: I thought if you would make that statement I would keep it in mind in reading these over overnight, so in reading a particular thing I would have in mind your possible objection to it.

Mr. Margolis: I do not intend to preclude myself, your Honor—I think generally that covers it.

The Court: Very well. We will recess until 10:00 o'clock tomorrow morning. [1858]

Mr. Kenny: Your Honor, I have just one matter in my department of the case, and that is, I was a little puzzled by counsel's statement——

The Court: He said he was going to offer all the cards too.

Mr. Rubin: Yes, they are offered. That offer has been made.

Mr. Margolis: With regard to those cards, if they are accepted in evidence we are going to ask that photostatic copies be made so that the organization can have its records back. They have taken away basic records of the organization. We don't mind as to the original letters and that sort of thing, if they go in evidence, why the originals can go in and it will not interfere with the conduct of the organization, but I do not believe that we should be permanently deprived of the basic records.

The Court: These are your books?

Mr. Margolis: They are in effect our books. They are application cards. They have basic information on them which is essential to the conduct of the organization.

Mr. Dixon: We have no objection, your Honor, to substituting photostatic copies for them if counsel want the originals.

The Court: You mean the Government will furnish the photostats? [1859]

Mr. Dixon: I cannot go that far, no, your Honor, from the point of view of providing them, I mean.

Mr. Margolis: Perhaps a summary could go in evidence, that the Government could prepare a summary and we could furnish some blank cards as exemplars of what the cards are, but we do have to have the records back.

Mr. Rubin: I think that can be worked out, counsel. We don't have any desire to embarrass the organization by having their basic cards taken from them.

The Court: All right. See if you can work that out. [1860]

* * *

CARL B. TENDICK,

called as a witness by and on behalf of the government, having been previously sworn, resumed the stand and testified as follows:

Cross-Examination

(Resumed)

By Mr. Margolis:

Q: Mr. Tendick, the Fish and Wild Life Service located in this area first started making these market reports for San Pedro and Santa Monica in August of 1945, is that right? A. Yes.

Q. Under what circumstances did they start making these reports and for what purpose?

A. Well, under the office of the Coordinator of

(Testimony of Carl B. Tendick.)

Fisheries, we had started making similar reports on the pilchard landings at Monterey, San Francisco, and Southern California.

Q. Pilchard is a technical term for what? [1868]

A. Sardines. Then we received an appropriation for the fiscal year 1946 to open the Market News office in the San Pedro area. It took us approximately a month to make our contacts and arrange to get the information, set up our equipment, and consequently we did not get started, actually publishing the reports, until the 1st of August.

Q. And you selected San Pedro and Santa Monica as the place to start, is that right?

A. Yes.

Q. And I assume it took you another month or two to get going as far as San Diego is concerned, is that correct?

A. Well, I think it was about a month and a half later when we started San Diego.

Q. You started in October. Then why didn't you have a report for Newport Beach to start with?

A. Well, we were pretty well crowded at first. We had been unable to make arrangements as to selection of an aide down there.

Q. Selection of a what? A. An aide.

Q. An assistant?

A. Yes, an assistant to collect the information. We were a little bit uncertain as to whether we were going to have enough funds to include Newport

(Testimony of Carl B. Tendick.)

Beach in our market reports, particularly since the pilchard reports was taking a [1869] great deal of our funds.

Q. The original reports which you issued contained what information?

A. The original reports——

Q. Starting in in August and September, what information did they contain?

A. It contained the reports of daily landings of sardines or pilchards, reports—well, at that time the season was only open at Monterey and San Francisco in sardines, and the Market News data, I mean the market reports from the dealers at San Pedro and Santa Monica. That was as much as we started with at the very first.

Q. Contained reports in terms of poundage only? A. Poundage only.

Q. Did you ever have information in the reports of the price?

A. We have on several occasions gotten information on price. However, we did not publish it.

Q. Never published information concerning price? A. No, not that I recall.

Q. The fact is you have published information concerning price, isn't it?

The Court: Counsel, I don't know what difference it makes. If he has, why not call it to his attention. I don't know that this witness, his testimony should be subjected to [1870] tests of veracity.

(Testimony of Carl B. Tendick.)

Mr. Margolis: I am testing his recollection on these matters, your Honor. I am certainly not challenging the witness' veracity, but his recollection on matters.

The Court: His recollection on these things, he testified he compiled them from reports; he has made available the reports to you; whether he recalls or not, I don't see that it makes a great deal of difference, counsel. [1871]

* * *

Q. Well, isn't it a fact that in August and September of 1946 your office published prices, reports on prices?

A. They may have. I was away on a trip to Seattle at that time.

Q. Seattle publishes prices all the time, does it not? A. I think they do. [1872]

* * *

Q. Let me ask you this question then: Isn't it a fact that the general practice was not to publish prices until August of 1946 when, at the request of some of the dealers, you started to publish prices?

A. As I say, I was in Seattle in August 1946. OPA prices were in effect at the time we started the Market News. For that reason we didn't deem it advisable to include prices. [1874]

Q. Are you publishing prices now?

A. They were fairly well generally known throughout the industry, what the OPA ceilings were, and we didn't attempt to collect them.

Q. That is the reason the prices were not published at the beginning? A. Yes.

(Testimony of Carl B. Tendick.)

Q. Then you started in August 1946 because then there was no OPA?

A. That was when we started.

Q. Then you stopped publishing prices in September 1946, isn't that right?

Mr. Schwartz: If the Court please, I object on the ground——

The Court: It is wholly immaterial, counsel. The objection is sustained. You have the records there and if they are published they are published, if they are not published they are not published. It does not make any difference what reason this witness assigns, or whether he remembers it or does not remember it.

Mr. Margolis: I assume I will have to make an offer of proof on this subject. [1875]

* * *

Q. (By Mr. Margolis): I have a document dated September 12, 1946, being a report of the United States Department of the Interior, Fish and Wildlife Service, Division of Commercial Fisheries, Market News Service, and a similar one for September 13, 1946.

First I will ask that they be marked for identification at this time. I think they can be given sub-numbers of the same exhibit.

The Clerk: H-1 and 2.

The Court: All right.

(The document referred to was marked Defendant's Exhibits H-1 and H-2 for identification.)

Mr. Margolis: September 12 is the H-1 and September 13 is the H-2.

Q. I show you two reports which have been marked for identification H-1 and H-2, dated September 12 and 13, 1946, respectively, and ask you whether or not those are copies of reports issued by your department concerning which you have been testifying.

The Court: Let's see. That is September 1946?

Mr. Schwartz: That is correct, and I object to the question, first of all, on the ground that the witness has not [1876] testified to any matters in September 1946, and if he has they are wholly immaterial to the issues in this cause. [1877]

The Court: September '46 is immaterial.

Mr. Margolis: This is a foundation question, your Honor, I submit.

The Court: Whatever occurred in September, 1946, concerning price or these other things is immaterial in this matter.

Mr. Margolis: The conspiracy charge goes right on through; it doesn't stop, your Honor. It doesn't say, the indictment——

The Court: The indictment was returned August 25th, and this is subsequent to the return of the indictment, and it alleges the conspiracy continued up to the time of its return. It is wholly immaterial. The objection is sustained.

* * *

Mr. Kenny: Your Honor, was the date of the indictment the 19th, or what was that date?

The Court: August 25, 1946.

(Testimony of Carl B. Tendick.)

Mr. Margolis: I have similar documents to those which have been marked as H-1 and 2, dated August 20th and 21st, your Honor, which I will ask to be marked for identification.

The Court: Very well.

The Clerk: I-1 and 2. [1878]

The Court: They may be H-3 and 4.

(The documents referred to were marked Defendants' Exhibits H-3 and H-4, for identification.)

Q. (By Mr. Margolis): I show you two documents that have been marked for identification as Defendants' Exhibits H-3 and 4, being headed as reports of the Wild Life Service, dated August 20th and 21st, 1946, respectively, and ask you whether or not those are market reports issued by your division of the same type concerning which you have been testifying. A. They are.

Q. I direct your attention to the fact that on page 2—withdraw that. The fresh fish reports are contained in each instance on page 2 of the document, are they not? A. Yes.

Q. And I direct your attention to the last column over to the right on page 2 of each of those documents, the column being headed, "Newport Beach Area, Price Range"; can you tell us what that column is intended to indicate?

Mr. Schwartz: Just a moment. If the court please, I object to the question and any similar questions on the ground that the prices of fresh fish

(Testimony of Carl B. Tendick.)

compiled by this office have absolutely nothing to do with the issues in this case. I don't know, but I suspect that the defendants' strategy here is to show that their prices were fixed or there was collusion or something as regards the dealers and the Department of the [1879] Interior, or whatever his strategy may be, but it certainly has nothing to do with the issues in this cause, namely, whether these defendants violated the Sherman Act in attempting to force a price-fixing contract on the dealers in San Pedro and the other areas mentioned in the indictment. That the issues here are pretty plain, they are pretty narrow, and this has absolutely nothing to do with it.

* * *

Mr. Schwartz: My objection goes to the ground of immateriality and irrelevancy to the issues in this case, your Honor.

Mr. Margolis: We submit it is material, your Honor, because it shows the economic conditions under which these fishermen are operating——

* * *

Mr. Margolis: I intended to ask him next where he got the information concerning these matters. The foundation has been laid for it——

The Court: I can't see what possible difference that would make where this witness got the information on price range for these. It just seems to me to be immaterial. The objection is sustained.

Are those the daily reports?

Mr. Margolis: Yes, daily reports. H-3 is August 20th and H-4 is August 21st. [1882]

(Testimony of Carl B. Tendick.)

Q. (By Mr. Margolis): Now you started obtaining information from Newport Beach on June 17, 1946, did you not?

A. Approximately that date.

Q. Is there any particular reason why that date was selected?

A. Well, we wanted to start the Newport Beach as soon as we could. We had been down and made several trips to Newport Beach trying to locate an aide to collect the data for us.

We finally discovered that the cost of an aide would be greater than getting the information directly by telephone, so we proceeded on the basis of making personal calls from our office to the dealers there.

Q. Does the fact that the strike was on at that time have anything to do with the starting to obtain the information?

A. No, we had been planning it throughout the previous winter.

Q. You do not have any data for Newport Beach prior to June 17, 1946, but you do have data for Newport Beach subsequent to June 1946, isn't that right?

A. That is right.

Q. Now it is a fact, is it not, that the report for June of 1946 covers a period of 13 days? [1883]

A. That is right.

Q. And during that 13 days it is shown that there are 234,490 pounds of landings of fresh fish at Newport Beach?

A. Yes.

Q. Is it also a fact, is it not, that those landings

(Testimony of Carl B. Tendick.)

were very much larger for that period of 13 days than for any other comparative period of which you have any records?

A. I couldn't say because I haven't examined the statistics to determine that point.

Q. We have here the monthly report for June 1946 which shows only information for Newport Beach June 17 to 30, showing 234,490 pounds, is that correct? A. Yes.

Q. Then in July of 1946 your report for Newport Beach covers the entire month, 31 days, is that correct? A. That is correct.

Q. And for the entire 31 days of July 1946 your report shows 302,438 pounds of landings at Newport Beach, is that right? A. That is correct.

Q. And for the month of August your report covers the entire month for Newport Beach, does it not? A. Yes.

Q. And during that entire month your report shows 289,477 pounds of landings at Newport Beach, is that correct? [1884] A. Yes.

Q. And your report for September 1946 for Newport Beach also covers the entire month, does it not? A. Yes.

Q. It shows 328,652 pounds of landings for the entire month? A. That is correct.

Q. Then for the month of October 1946 your report also covers the entire month, does it not?

A. Yes.

Q. And for that month it shows 219,361 pounds of landings at Newport Beach? A. Yes.

(Testimony of Carl B. Tendick.)

Q. The month of November, your report covers the entire month for Newport Beach, and shows landings of 161,309 pounds for that entire month, is that correct? A. That is correct.

Q. The month of December 1946, the entire month is covered for Newport Beach, and shows 279,891 pounds, is that right?

A. That is right.

Q. For the month of January 1947 your report shows the entire month for Newport Beach and shows 228,183 pounds, is that right?

A. That is right. [1885]

Q. Now I think the last month that you brought us is February. I guess that is the last report you have, is that right, Mr. Tendick? A. Yes.

Q. And for the month of February you have the entire month showing 278,220 pounds?

A. That is right.

Q. At Newport Beach? A. Yes.

Q. In your previous testimony you stated that when Mr. Hinkle goes down to the market in San Pedro there is nine chances out of ten he is going to find out or be informed as to whether there is anything coming in at Santa Monica. Now by that you meant that Mr. Hinkle, when he went to San Pedro, would get information at San Pedro concerning what was coming in at Santa Monica?

A. Not necessarily the amounts or the species of fish, but if there was any great volume or any scarcity at Santa Monica it would be reflected inside San Pedro.

(Testimony of Carl B. Tendick.)

Q. In other words, he would know what was coming in at Santa Monica by judging the flow of fish that was coming in at San Pedro, is that right?

A. Not at all.

Q. How would he know? What information would he gain at San Pedro that would tell him when the fish was coming in [1886] at Santa Monica and in what quantities?

A. He naturally would inquire about the market conditions in general.

Q. At San Pedro?

A. At times. I mean to say, he can observe, for instance, if fish are coming in and he can ask any of the dealers, "Well, is there anything coming in at Santa Monica?"

Q. He asks the dealers whether fish is coming in at Santa Monica? A. He can.

Q. And the dealers would give him information, the dealers in San Pedro would give him information as to fish coming in at Santa Monica, is that right? A. They can.

Q. Is that what you were referring to there in that answer?

A. Absolutely. Just the same as he can see whether fish boats are at the dock at San Pedro, and he might inquire of some of the dealers whether they would know whether there was any fish coming in at Santa Monica.

Q. Then he gets that information and from that he knows approximately what volume of fish are coming in at Santa Monica, is that right?

(Testimony of Carl B. Tendick.)

A. No, he calls the dealers at Santa Monica.

Q. But that gives him a sort of a double check?

A. Yes, that is right.

Q. As to whether the Santa Monica dealers are telling him the truth? A. Yes.

Q. And I assume likewise he can inquire of the Santa Monica dealers about what is going on in San Pedro?

A. Well, he can make his own observations there by seeing the actual boats.

Q. He sees the actual boats in San Pedro, too, doesn't he?

A. Yes. I say at San Pedro he can observe the actual boats. We have another, a further check on the vessels which operate below the border in that the Customs has data on their volume of landings.

Q. But when he goes to Santa Monica he can get information at Santa Monica from the dealers concerning San Pedro, isn't that right?

A. He probably could, although I have never heard him asking the Santa Monica dealers such a question.

Q. Were you present when he talked to Santa Monica dealers?

A. At times. We are in the same office, just adjoining rooms with the door open.

Q. He goes to the wharf to see the Santa Monica dealers, does he? [1888]

A. No, he phones them.

Q. I see. A. Or his clerk phones them.

Q. Does he also check with the San Pedro deal-

(Testimony of Carl B. Tendick.)

ers as to what is coming in at Newport Beach or San Diego?

A. Not particularly. Occasionally one of them will volunteer and tell him. [1889]

* * *

Q. (By Mr. Margolis): Do you know how the dealers get this information concerning what is happening in other ports?

A. Well, there is several customs brokers there, fish brokers there, who sell the fish to the fishermen, and they can inquire from them, I presume, what is coming in at other ports.

* * *

Q. (By Mr. Margolis): Do you know whether they phone other dealers located in other ports to obtain this information?

A. I couldn't say; I don't know.

Q. You have been getting data on price, is that right? You have been collecting data on price?

A. Occasionally at the request of our office we would make what we call spot observations.

Q. What do you mean by "request of your office?" Do you mean the Washington office?

A. For instance, when the OPA ceilings were removed our office requested that, I think it was twice a week, we make observations on price to see whether there was any increase or decrease in prices. [1890]

Q. Those requests came from your Washington office?

A. They came from our Washington office.

(Testimony of Carl B. Tendick.)

Q. And those are the only purposes for which you have collected price data?

A. Other than the short period they were published.

Q. The reports concerning which you have been testifying are not intended to include cannery fish, are they? A. Not intended to, no.

Q. Except for the fish that you have testified is purchased at Santa Monica and delivered by truck from Santa Monica to the cannery?

A. Yes.

Q. With that single exception the reports are not intended to include cannery fish, is that right?

A. That's right.

Q. The reports are not intended to include fresh fish shipped in by truck or railway from other points, are they? A. No.

Q. Is there a specific list of dealers to whom you go to get the information which is contained in the reports? A. Yes.

Q. Could you give us the names of the dealers from whom you get this information?

Mr. Schwartz: I object to that.

A. I couldn't offhand. [1891]

The Court: Objection sustained.

Mr. Margolis: Your Honor, it may not—

The Court: This whole line of testimony goes to, whether there was or wasn't a flow of fish whether it was interfered with, or whether a conspiracy existed to interfere with the flow of fish.

(Testimony of Carl B. Tendick.)

Q. (By Mr. Margolis): Do your reports include information [1893] of anchovies and sardines caught and sold to the dealers?

A. There is some sold to the dealers.

Q. Do the reports include that information?

A. They do, if they are purchased by the dealers.

Q. If the same sardines and anchovies are sold directly by fishermen to the little bait places along the beach, are they included? A. No.

Q. If they are sold to sport boats, or directly to barges, are they included?

A. No. We don't classify that as going into the wholesale fresh fish trade.

* * *

Q. (By Mr. Margolis): There are wholesalers located away from the port, that is, in Los Angeles City and in other localities away from the port, who deal in fresh market fish, that is so, isn't it?

A. Well, there are wholesale dealers who handle fish in other ports—other points, yes.

Q. I am not talking about other ports; I am talking [1894] about in Los Angeles, for example.

Mr. Schwartz: If the court please, I am going to object to that—

The Court: The witness answered the question, as I recall, before. He testified his reports dealt solely with the fish that was bought there at the seaboard, at the different ports. Is that correct?

The Witness: That's right.

Mr. Schwartz: It was my understanding that this witness was brought back so that he could be

(Testimony of Carl B. Tendick.)

examined as to these documents which he produced.

Mr. Margolis: Your Honor, we had not completed our cross-examination.

The Court: Let's go on with whatever it is. This isn't a controversy between this witness and the fishermen; nor is it a controversy between the fresh fish dealers and the fishermen.

Mr. Margolis: If your Honor please, certain reports have gone into evidence, and we want to find out what is and what is not included in those reports.

The Court: Go ahead and ask the question. Where it is material and proper I have admitted them, and where it isn't I have sustained an objection.

Q. (By Mr. Margolis): Do you know whether any fish is sold directly by fishermen to downtown dealers? [1895] A. I couldn't say.

Q. You don't know one way or the other?

A. No, I don't know.

Q. Also, there are some dealers who handle relatively minor quantities of fresh fish ordinarily, is that right?

Mr. Schwartz: Just a minute. What was that? I object to the question, if the court please.

The Court: Objection sustained.

Q. (By Mr. Margolis): On page 1483 of the transcript you testified that there may be a few minor ones—referring to dealers there—that handle small quantities—you are referring to fish, and then

(Testimony of Carl B. Tendick.)

you went on to say that they handle small commercial quantities.

Now, how many such dealers are there?

The Court: Wasn't he just testifying concerning those? Doesn't the transcript say at other ports than these main ports, wasn't that the testimony?

Mr. Margolis: I am not talking about other ports.

The Court: If you are asking the witness in cross-examination with reference to the transcript, I think it is only fair to give him the whole transcript. [1896]

Mr. Margolis: I certainly would be glad to let him look at any portion of the transcript he wants to.

The Court: What page is it?

Mr. Margolis: 1483.

The Court: What difference does it make? The whole thing is immaterial, selling minor quantities of fish.

Mr. Margolis: Perhaps those quantities were not minor in May and June of 1946. We have a right to inquire into it.

The Court: Let's get at it then.

Mr. Margolis: I am trying to lay the foundation for it.

The Witness: What is the question that you have reference to?

Q. (By Mr. Margolis): The question I have reference to is on the top of page 1483. I thought

(Testimony of Carl B. Tendick.)

you might read a little bit before to see what we are referring to.

A. The question here is with reference to Santa Monica.

Mr. Schwartz: As to these relatively small dealers?

The Witness: Yes. I think there are a few little waystands along the Santa Monica pier that occasionally buy directly from fishermen.

Q. (By Mr. Margolis): There are other minor dealers in other ports, are there not?

A. In most other ports. [1897]

Q. In most other ports? A. Yes.

Q. And your reports concerning which you have testified here do not include the fish delivered to those dealers? A. No.

Q. And you do not know whether there was a substantial increase in fish handled by those dealers in June of 1946, do you?

* * *

The Witness: I do not.

Q. (By Mr. Margolis): Do you have any data at all in your office concerning the volume of these types of fish, cannery fish, fish shipped in by truck or railway, fish sold to these minor dealers, fish sold to sport boats, fish sold to bait places, fish sold to men like this man Vitalich who doesn't make reports—do you have any data at all in your office concerning the amount of fish delivered to those places in the month of June, 1946?

A. Not at the present time, I do not.

(Testimony of Carl B. Tendick.)

Q. Now on page 1482 of the transcript you testified, "We have had that situation several times at San Diego when there was no fish delivered and we would check to find out whether it was just a failure of our aide to obtain a report or whether it was actually true that there was no fish obtained."

About how many times has that occurred?

A. I couldn't say offhand. As I mentioned, I think before we sometimes have had difficulty in receiving communications and we are not always certain that when a report is not received that it actually meant that there was no fish landed or that there was no report to be made, and we have to check up on those at times to find out what the situation is.

Q. Your investigation has revealed, has it not, that you do not get accurate information from San Diego, is that right?

A. I wouldn't say one way or the other on that. I can't prove it.

Q. You don't know whether your investigations have revealed that the information is accurate or inaccurate?

A. That is true.

The Court: Have you ever had any complaints of inaccuracy?

The Witness: No, sir.

* * *

The Court: They are marked for identification.

Mr. Margolis: The dailies are part of 40?

The Clerk: No. 39.

* * *

(Testimony of Carl B. Tendick.)

Q. The daily reports have been marked for identification here as Government's Exhibit 39 for identification, and I have taken from those reports dated June 17, 18, 19 and 20. Those are the copies of those reports, are they not?

Q. I note that on each of those reports—I want you to examine the reports and see if what I say is correct—under the words “San Diego area” there is the statement “No report received.”

A. That is true.

Q. That means, does it not, that information for those days, that you received no information as to whether there were or were not any landings at San Diego and if there were landings the quantity?

A. We did not on that particular day. We may have received word later.

Q. You may have received word later?

A.. Yes.

Q. Well, I will hand you—if you had received word [1903] later it would be included in some later report, would it?

A. It should be. I don't know.

The Court: What dates are those?

The Witness: June 17, 18, 19 and 20.

The Court: 1946?

The Witness: 1946.

Q. (By Mr. Margolis): I will hand you the complete file of reports and ask you to find any later report in which those dates are recorded.

A. Well, they may have been checked out as having been stated.

(Testimony of Carl B. Tendick.)

Q. Just to help you to save time, you will find that I pulled them out in order. He is June 21.

A. (Examining documents) No, I do not find any report where he states that there were or were not any landings on those days.

Q. And as far as your figures for the month of June are concerned, when you give the total landings—and when I say June I mean June 1946—when you give the total landings for San Diego they do not include, as far as you know, whatever landings there were on the 17th, 18th, 19th and 20th of that month?

A. I do not know personally for the simple reason that I was on vacation those particular days.

Q. But you are familiar with these reports?

A. It would be customary for Mr. Hinkle after not receiving reports several days to check with his aide at San Diego to find out whether it was a case that there were no landings or whether it was just a case that he had failed to receive their report.

Q. Well, isn't it a fact——

A. But the mere matter of fact that we on that particular day did not receive a report would not necessarily mean that that was a case where there were no landings.

Q. You don't know if there were landings?

A. I would not ordinarily, not being there, but Mr. Hinkle, I am sure, would have checked on that matter.

Q. Isn't it a fact that in these reports, when you don't get a report from San Diego for a day or two

(Testimony of Carl B. Tendick.)

days, it is your practice when you get those reports to make a statement that reports for several days are included under a single total?

A. That is true.

Q. And there is no such statement with regard to the dates of June 17, 18, 19 and 20, is there?

A. No, there is no statement with respect to those days. [1905]

Q. I notice on these reports—the monthly reports I am talking about now, which are part of Government's Exhibit 40, for identification—there is a table headed "Monthly Cold Storage Report"; I wonder if you could tell us what that is.

A. It is the report of fish frozen, under one heading, and holdings of frozen fish in storage, in cold storage houses in the State of California.

The Court: That is where?

The Witness: In the State of California.

The Court: That is not only Southern California?

The Witness: No; the State of California as a whole.

The Court: Do you have it divided into areas, like Los Angeles?

The Witness: No, we do not.

The Court: Well, you do in subsequent reports, don't you?

The Witness: No, not—the monthly cold storage report is collected through our Washington, D. C. office and they mail us this data for publication.

Q. (By Mr. Margolis): Just by way of ex-

(Testimony of Carl B. Tendick.)

ample I am referring to the February, 1946 report so that we can identify what some of these things mean. On page 7 of that report you have the heading "Monthly Cold Storage Report," and that includes as you say all of California; now on the left-hand column is a column headed, "Species," then a subheading [1906] "Frozen Fish and Shellfish" with various kinds of frozen fish and shellfish listed,—that refers to the species, isn't that right?

A. Yes.

Q. Then you have an item "Bait and Animal Food," under the general column "Frozen," February, 1946, 26,818; does that mean that during the month of February, 1946 there were 26,818 pounds of bait and animal food frozen—gone through the process of freezing during that month?

A. Yes.

* * *

Q. (By Mr. Margolis): Just one more preliminary question. When I asked you about this report, your answers will hold true generally as to the meaning of figures and so forth in all of these reports under this heading, would they not?

The Court: Well, under the column "Frozen" it means frozen that month, isn't that right, no matter whether it is shellfish or barracuda or—

The Witness: Yes.

Q. (By Mr. Margolis): That is true in all of these reports regardless of the month, it is not only true for February, 1946? A. That is true.

* * *

Q. (By Mr. Margolis): Then your practice is

(Testimony of Carl B. Tendick.)

on that column to give the current month, February, 1946, the preceding month January, 1946, and the same month for the preceding year, in other words, February, 1945 in this particular instance?

A. Yes.

Q. And each of those columns under the general heading "Frozen" is intended to indicate the total number of pounds frozen during that month?

A. That is right.

Q. Then we have total holdings as another main heading, and in the particular report we are talking about, one column headed, "March 1, 1946," another column headed, "February 1, 1946." and another column headed, "March 1, 1945"; now, is it or is it not a fact that the poundage there, for example, under "Bait and Animal Food" 162,009 pounds is intended to indicate the total number of pounds of frozen bait and animal food in this particular case, on hand as of that particular date in the State of California.

A. Yes, in the cold storage, in the regularly recognized cold storage houses.

Q. And among them, for example, is the Union Ice Company? A. Yes. [1909]

Q. That is in Wilmington, isn't it?

A. Yes.

Q. And there are several of them in Los Angeles and other places? A. Yes.

Q. Is that figure in terms of pounds?

A. It is.

Q. Or tons? A. Pounds.

(Testimony of Carl B. Tendick.)

Q. Now with regard to these monthly cold storage reports, directing your attention to the one for June, 1946, it is a fact, is it not, that during the month of June, 1946, more fish were frozen than during the month of May, 1946?

* * *

The Witness: Not according to these figures, they are not.

Mr. Margolis: I mean slightly less. Excuse me.

* * *

Q. Now for the month of June there were approximately 425,000 pounds of fish frozen and for the month of May slightly over 457,000 pounds, is that right? A. That is right.

Q. About 32,000 pounds less in the month of June than in the month of May? A. Yes.

* * *

Q. I want to direct your attention to page 2 of the June, 1946 market report and on the bottom half of that page there is a column headed "Fish Imports, Arizona and California"? A. Yes.

Q. I wonder if you would explain to us what that is intended to indicate.

A. That indicates the volume of those products, that is, fish imports, fish, shellfish and other fishery products which are across the border at the various ports of entry, from Arizona and California, and——

The Court: From foreign countries or other states?

The Witness: From foreign countries.

(Testimony of Carl B. Tendick.)

The Court: Only?

The Witness: Yes.

The Court: What about the high seas?

The Witness: Yes, we get it from the San Diego customs too.

The Court: That is only when it goes through customs?

The Witness: That is only what goes through customs, and it is reported to the customs representatives at the various ports.

Q. (By Mr. Margolis): Does it include the amounts brought in by boat?

A. It includes the amount brought in by boat if it is a true import.

The Court: That is, if it goes through customs?

The Witness: Now, we have boats, American boats, that have to make entry too, which is not an import.

Q. (By Mr. Margolis): Let me ask this: American [1916] fishermen go fishing in Mexican waters, do they not?

A. Some of them, yes.

Q. From San Diego, Newport Beach, and San Pedro?

A. Yes.

Q. And then they catch their fish in Mexican waters and then they bring it back up here for disposal in the United States at these ports?

A. That is true. We do not class that as an import.

Q. You do not class that among this type of fish?

A. No.

(Testimony of Carl B. Tendick.)

Q. On the June, 1946 report this would show the type of fish that was brought by truck, railway express, as far as the method of delivery is concerned, is that correct?

A. Yes. There is some that actually comes by boat.

Q. That is, delivered by boat but not necessarily the same boat that caught the fish?

A. That's right.

Q. It is merely a method of transportation?

A. Yes.

Q. So here the grand total for June of 1946 of 1,307,164 pounds indicates that in the month of June there was delivered through the customs that many pounds of the various species of fish there listed, is that right? A. Yes.

The Court: That is canned and frozen and every kind? [1917]

The Witness: Yes, various types of fishery products.

The Court: Whether canned or otherwise?

The Witness: Yes.

Q. (By Mr. Margolis): There is practically no canned fish that comes in from Mexico, isn't that right?

A. There is 119,000 pounds of canned abalone there, as I see one item.

Q. Where it is canned, it is shown as canned, is that right? A. That is true.

Q. For example, you have the first type of fish

(Testimony of Carl B. Tendick.)

that is listed in June, cabrilla—is that the way you pronounce it? A. Yes.

Q. 31,230 pounds. That is fresh fish, is that right? A. Yes.

The Court: Frozen?

The Witness: It will probably be fresh.

The Court: All right.

Q. (By Mr. Margolis): That would be true of the other types of fish, except where it is indicated that the fish is canned, is that right?

A. Yes.

Q. All right. That total of 1,307,164 pounds includes approximately 120,000 pounds that are canned, is that right? [1918] A. Yes.

Q. So there will be a little over 1,100,000 pounds fresh?

A. Well, there is some of that that is your other fisher products, your livers and fish sounds and fins.

The Court: Sounds? What is that?

The Witness: The bladder.

Q. (By Mr. Margolis): In order to get the fresh fish, then, should we take the subtotal——

A. Under fish.

Q. (Continuing) Under fish—would that include the shellfish?

A. It would include certain items of shellfish.

Q. So if we took the subtotal following shellfish—subtotal for fish is 309,000 pounds.

A. Yes.

Q. It is a couple hundred more, but I am taking

(Testimony of Carl B. Tendick.)

the round number, 309,000 pounds, and for shellfish the subtotal is 753,000 pounds?

A. That's right?

Q. Those two items are a little over 1,000,000, from which you would have to deduct 120,000, is that right?

A. Yes.

Q. In the month of July, 1946, there is 196,000 pounds of fresh fish and 385,000 pounds of shellfish, from which you [1919] have to deduct about 170,000 pounds of abalone canned, is that right, or you have a total of approximately a little over 400,000 pounds of fresh fish as compared with about 800,000 pounds in June, is that right?

A. Yes.

Q. We were last talking about July as compared with June of 1946, is that right?

A. Yes.

Mr. Margolis: I have no further questions.

* * *

Redirect Examination

By Mr. Schwartz:

Q. Mr. Tendick, you were asked by Mr. Margolis on [1921] cross-examination concerning the keeping of the records at your office of all fish which comes in for the fresh fish market. Is that your understanding?

A. Yes.

Q. Does your office attempt to get the figures of fishermen or kids who go out on the pier with a bamboo pole to get their figures of their catch?

A. Only what is deemed commercial fisheries.

Q. And if a kid goes out and get some fish with a bamboo pole and sells it to a retail market, is your office interested in getting those figures?

A. No.

(Testimony of Carl B. Tendick.)

Q. Or if somebody gets out in a skiff and catches more fish than he thinks he can eat, and sells the balance to a retail dealer, does your office try to get that kind of information?

A. No.

Q. Now with respect to the compilations which were made by your office, I believe you stated that as to San Pedro there was one dealer who did not report to your office.

A. That is true. [1922]

* * *

Q. You do not know of your own knowledge why that company will not give your office the information that you seek?

* * *

The Witness: I don't know.

* * *

Q. Is your office in any way interested in the business of the fish dealers beyond the information that you seek, either personally or by telephone?

* * *

The Witness: Only in so far as it concerns the various other statistical information which we endeavor to collect from them in general.

Q. (By Mr. Schwartz): Now does your office, as a matter of policy, have any interest in concealing or issuing any false statements in these market news reports? A. No.

Q. Now, to the extent then that as to the practice of [1923] your office in gathering and compiling statistics for your market news service is concerned, and in so far as that relates to these

(Testimony of Carl B. Tendick.)

two compilations which you have produced here, would you say as to the San Pedro-Santa Monica situation that that include all of the figures that were reported to your office?

A. Yes.

* * *

Q. (By Mr. Schwartz): On these totals that you are asked about in regard to the frozen fish in the state of California, do you have any knowledge of your own that would indicate to you where this fresh fish is frozen, whether it be northern California or southern California, and which would be greater?

A. I wouldn't know. The information is collected from our Washington, D. C., office.

Q. Would you know whether that fish is frozen whether it came from ports within the state of California, outside [1924] the state of California or from points other than the West Coast?

A. I would know some species that are not produced here.

Q. And would those species come from points, say, on the East Coast of the United States?

A. Some of them.

Q. Or the Gulf Coast?

A. Some of them.

Mr. Schwartz: I have no further questions, your Honor.

The Court: Any further questions?

Mr. Margolis: No questions.

The Court: You may be excused, Mr. Tendick.

(Witness excused)

The Court: You say you have two more witnesses?

Mr. Schwartz: Yes, and neither one will be very long.

The Court: You mean about a minute apiece?

Mr. Rubin: I might increase that to three. I know the third one will only be a minute. I am only going to ask him two questions. He is from San Diego.

Mr. Garrett: I should desire to cross examine on that witness, I know, your Honor.

The Court: On the San Diego witness?

Mr. Garrett: Yes.

Mr. Rubin: Then I would not venture to put him on before [1925] the noon recess.

The Court: All right. Recess to 2:00 o'clock. Remember the admonition.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock of the same date.)

* * *

Mr. Schwartz: The usual stipulation, your Honor.

At this time I would like to make reference to Exhibit 34. Reading the totals thereon for all species of fish for the month of——

* * *

Mr. Schwartz: I want to read for the month of March, 1946 the total of 485,560 pounds; the month of April, 638,887; the month of May, 1946, 477,056; the month of June, 1946, 60,623 pounds. And this document refers to [1927] deliveries of fish to San Pedro and Santa Monica, wholesale fish dealers.

* * *

WILLIAM J. CARLISLE

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name?

The Witness: William J. Carlisle.

* * *

ALBERT V. MOORE

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Schwartz:

Q. Your name, sir? A. Albert V. Moore.

Q. Your occupation, Mr. Moore?

A. Bookkeeper for the Bay Fish Market, Santa Monica.

* * *

Cross Examination

Mr. Margolis: Shall I make my offer of proof, your Honor?

* * *

The Court: Very well.

* * *

Mr. Margolis * * * Then I have another offer of proof with regard to the witness Tendick. Your Honor will recall that yesterday there was a matter which arose during the giving of testimony and I haven't had an opportunity to submit it.

(Testimony of Albert V. Moore.)

At that time I was cross examining the witness Tendick with regard to the reasons for discontinuing the giving of information relating to prices on their Fish and Wildlife reports, which are in for identification as Government's Exhibits 39 and 40.

In that connection, I offer to prove that if we were allowed to ask appropriate questions along the line to which objection was sustained, that the witness would testify as follows:

That they obtained the price information from the various fish dealers which was given to them in the same manner as information concerning the number of pounds purchased.

That after keeping records of those prices for a while they found, through further investigation, that the information concerning rate ranges which had been given to them was, in fact, not correct and that there were no rate ranges on the purchase of fish but that there were single prices.

That they then went to the various fish dealers, confronted [1978] them with the fact that they were not getting accurate information, and that being so confronted the fish dealers refused to give any further information concerning fish prices except occasionally and sporadically and refused to do it on a daily basis thereafter.

* * *

Mr. Margolis: Those are my entire offers of proof.

(Testimony of Albert V. Moore.)

The Court: Do you wish to be heard?

* * *

Mr. Margolis: * * * Now, with regard to the Tendick matter, it goes to the reliability of the figures obtained by the Wild Life Service.

* * *

(The jury returned to the courtroom at 4:05 o'clock p.m.)

* * *

The Court: Ladies and gentlemen of the jury, the testimony of the witness Mr. Carlisle, who preceded this witness on the stand, and this witness, as well as Exhibits 47, 48, 49 and 50, are stricken. You are instructed to disregard the testimony of both of them and each of them and to disregard the exhibits. They are stricken in all respects except one thing as to each witness, that during the month of June, 1946 Mr. Carlisle's firm, the Santa Monica Seafood Company, bought fish in Santa Monica, and during the month of June 1946 Mr. Moore's firm, the Bay Fish Market, bought fish in Santa Monica. The reason being that it is immaterial whether or not they bought 60,000 pounds or 50,000 pounds or whatever number of pounds of fish they bought during the month of June in Santa Monica.

Mr. Kenny: In other words, the jury—I just want to make this clear, your Honor—the jury is to disregard all the testimony since 2:00 o'clock this afternoon except those two facts, that they bought fish, is that right?

(Testimony of Albert V. Moore.)

The Court: You mean we have had two witnesses this afternoon?

Mr. Kenny: That is all. These are the only two witnesses and they are to erase everything in their minds except those two facts.

The Court: Except those two facts, that each of them testified that during that month of June their respective firms bought fish in Santa Monica.

I might make it a little clearer to you by stating again what I have stated to you before, that the defendants are on trial here for conspiring to restrain the trade and commerce in fresh fish, for making an agreement to do so; they are not on trial for actually doing so. That evidence [1995] is offered by the Government only, and is to be received by you only, in connection with your conclusion, if the case gets to you, as to whether or not they agreed to do so.

Is that clear to everyone? (Assent.)

This witness may be excused, and you can take your exhibit back.

(Witness excused.)

The Court: The exhibits are stricken from the files. The Clerk will cancel the exhibit numbers and use them again.

(Government's Exhibits 47, 48, 49 and 50 respectively ordered stricken.)

* * *

Mr. Margolis: That has been completed, all of them that have been completed. I want to speak with regard to that.

With regard to Exhibit 24, that is the shipment—what is the name of that company, Seattle——

Mr. Rubin: Los Angeles-Seattle Motor Express.

Mr. Margolis: Los Angeles-Seattle Motor Express. We were able to make our examination, get the information we wanted with one exception. At the bottom of Exhibit 24 is written in ink: "Total Weight from Oregon points was 658,236 pounds for same period. Grand total 2,266,417 pounds." Then the initials W. C. FF."

Mr. Rubin: You are talking about West Coast Fast Freight [1998] now.

Mr. Margolis: All right. The information that our bookkeeper receives is that the information with regard to Oregon points was not gathered here at all, but was gathered in Oregon, and was sent down here from Oregon and prepared under somebody else's supervision, and was simply added to these figures.

That is not true of the information with regard to the Seattle points, which precedes that portion of the exhibit, and on which we were allowed to see the books.

The Court: I think the witness testified to that on the stand.

Mr. Margolis: He did so testify?

The Court: Yes, I think he testified he had here certain documents, that he had to depend on someone else. One witness did.

Mr. Margolis: I don't remember that. If this exhibit went in in its entirety, and if the record so shows, we would move to strike the portion with

regard to Oregon, the portion that I read, on the ground there is insufficient foundation. It wasn't prepared under the supervision of the witness; the books aren't available to us for checking. And if it isn't clear from the record that that is the situation with regard to that information, and the government believes that the facts are different than I have represented them to be, [1999] we want the witness to come back so we can make the record clear on that.

Mr. Rubin: No. 24 is not in evidence.

Mr. Margolis: Yes. I think your Honor reserved the ruling until such time as we would have an opportunity to examine it. We would want the witness back for only one point, if it is not already clear in the record, and that is to establish that the information at the bottom of the last page in ink came from Oregon, was not prepared under the supervision of the witness, or of anybody working under his direction or control; that he has never seen the books, knows nothing about them, and that the information was simply sent from another point. If there be a stipulation that he would so testify, we need not call the witness back, your Honor, then we can make our objection at the time that the document is offered in evidence.

Mr. Rubin: I think, if your Honor please, that the testimony as to this document referred to the portion which is on the first page as to the points of origin, and it refers on the first page to Seattle and Washington points to Los Angeles and San Diego points. That is the only—

Mr. Margolis: You don't intend to offer the ink part?

The Court: I think somebody asked him about that.

Mr. Margolis: If there is no intention to offer the part in ink, your Honor, we have no desire to call the witness [2000] back. We have seen the records and we are satisfied.

* * *

The Court: Very well.

The offer has been made on behalf of the Government—have you finished looking through the original documents?

Mr. Rubin: Yes, your Honor.

The Court: I will hear your objections.

Mr. Andersen: This offer goes with respect to those offered in their entirety?

The Court: The offer goes to everything. He made his offer the other day.

Mr. Margolis: We are prepared completely to make our objections to those in their entirety and on the part of the others, we need a little more time on the ones that were just marked this morning.

* * *

The Court: * * * I have read all of the documents which they have offered in their entirety, in fact, I have read all of the documents which they have offered except some of the latter ones that I figured there was no use in reading because I didn't understand what portions were being offered. I read them with the statements which you had made the other evening of your objections in summary form.

I cannot see how your objections in particularizing them [2011] to any of these documents could or should be sustained. They all seem to me to be material, to relate to the situation, to be relevant; they are not surplusage in the sense that there is a lot of cumulative matter of material here. So it would seem to me that these would be admissible.

Now you perhaps can point up your objections.

Mr. Margolis: Very well, your Honor.

The Court: But they start in here just before the time of the strike—I am making this statement, counsel, to keep in mind the fact that all the evidence relating to the strike is only admissible and material as going to showing an agreement. In other words, that the defendants are not here on trial for a strike or for picketing.

Mr. Margolis: If your Honor please, there was one thing that I might dispose of generally first, and I think it may have been disposed of already, but I would like to be heard on it.

Our primary position is that any document offered in part should go in in its entirety as to all documents. If, however, as I understand your Honor's ruling to be, it is that your Honor will admit documents in part, then of course we intend to make an objection in part.

The Court: I think the law permits a document to be admitted in part, offered and admitted in part, on behalf of the person offering it. But in doing so it must all be presented to the Court and the other side may at that time or [2012] later offer the entire document.

Mr. Margolis: Then I would like, if I may, your Honor, to restate our objection, so that the record may be entirely clear with regard, at this time, to all of the exhibits which are being offered in their entirety, to-wit, as I have them: 206, 207, 211, 212, 213——

The Court: Wait a minute. 206, 207, 208. That was identified before.

Mr. Margolis: Maybe I am confused. I was limiting myself to the stipulation, and we would like to keep the others separate, if we may, your Honor.

The Court: All right. 206, 207, 211, 212——

Mr. Margolis: 213, 214, 215, 216, 217, 219, 220, 225, 227, 401, 402, 405——

The Court: 403.

Mr. Margolis: 402, your Honor? 402 and 403?

The Court: 403, yes, in its entirety.

Mr. Margolis: Excuse me a moment, your Honor.

The Court: Do you have a copy?

Mr. Margolis: Apparently we don't have a copy. We will ask for a photostatic copy. Very well, your Honor, then we will go to 403.

We will ask to look at some of those in a few moments, your Honor, if we may. 405——

Mr. Rubin: 404 did you call? [2013]

Mr. Margolis: I guess we don't have a copy of that either. 404, 405, 406, 406-A, 311, 312, 314, 317, 328, 332, 333, 334, 203, 218——

Mr. Rubin: Wait a minute. I don't have 334 on my list.

The Court: 334 yes. 203.

Mr. Margolis: 203, 218, 231, and 236.

Now, that is our complete record of those that are being offered in their entirety, pursuant to the stipulation as to foundation.

The Court: Very well.

Mr. Margolis: Am I correct in that?

Mr. Rubin: Yes, my list conforms to that.

Mr. Margolis: Does that check with your Honor's list?

The Court: That seems to be the record I have, except as to Exhibit 42.

Mr. Margolis: 42 are the cards?

Mr. Rubin: 42, 43 and 44, that is a separate classification.

The Court: Are they offered in their entirety?

Mr. Rubin: Yes, your Honor.

Mr. Margolis: Could we treat that separately?

The Court: Is that under the stipulation?

Mr. Rubin: Yes.

Mr. Margolis: Yes, they are under the stipulation, but they are cards and are in a little different classification. [2014] I would like to eliminate from this particular objection 42, 43 and 44 and 45.

The Court: Very well. As to all of these, they are all strike minutes, except 332, 333, 334—

Mr. Margolis: 203.

The Court: 203; 218 seems to be—I don't know whether it is the whole minutes, it is just a resolution. Anyhow I will treat it separately. 218, 231, and 236.

Mr. Margolis: That is correct.

The Court: Except for that all of the others you called off on the list are minutes of meetings, either strike committee or general meetings of the union, and beginning not prior to May 27th, as far as I can see, and going up into June.

Mr. Margolis: As to each of these exhibits, if your Honor please, we object as to each of them in their entirety, and as to each and every paragraph and sentence of each of said exhibits on the following grounds: that they are irrelevant, immaterial, ambiguous, and unintelligible, cumulative, and hearsay as to all of those defendants who, first, are not shown on the face of the documents to have been present at said meetings, that is, with reference to the committee meetings; and, second, not connected up as to all of those defendants who appear to have been present but are not shown to have participated on the face of said minutes in said [2015] meetings.

* * *

The Court: Yes. And on those grounds at this time I will overrule the objection, subject to your motion to strike, as I have ruled in connection with other matters. In other words, if at the conclusion of the case, conclusion of the government's case, you deem it wise and care to make a motion to strike, I will at that time give consideration to the points which you have made here.

Mr. Margolis: I understand that. I would like to make certain specific references, if I may, your Honor.

With regard to Exhibit 207, which are the minutes of May 30, 1946—does your Honor have that?

The Court: I have it right here, yes.

Mr. Margolis: The next to the last paragraph, particularly that which reads: "Moved, seconded, and carried, that Jeff Kibre be recalled to San Pedro for the purpose of assisting strike committee in expediting matters in reference to strike," that that is hearsay with reference to the defendant Jeff Kibre.

The Court: There will be the same ruling on that. [2017]

Mr. Margolis: May I see Exhibit 227?

(The document referred to was passed to counsel.)

Mr. Margolis: With regard to 402, I would like to object on the same grounds as have heretofore been stated with respect to 328 and 411. It is a similar set of minutes and obviously——

The Court: Dated when?

Mr. Margolis: Dated March 24, 1946.

The Court: That is the Santa Monica unit?

Mr. Margolis: That is correct. There is a lot of material which I think perhaps your Honor would want to look at.

The Court: Let me look at 402 while I have it in mind.

(The document referred to was passed to the Court.)

The Court: I remember reading this because I didn't figure out what the red numbers were under the names. I do not see what this has to do here:

"Communication from Seattle OPAC office of

our monthly paper. CIO strike finance committee and copies of telegrams to Senators Murray, Knowland and Downey on support of Pepper minimum bill."

Mr. Rubin: We are not interested in that, your Honor. That can go out.

The Court: "And opposition to Case Bill were read for information." I cannot see what that has to do with this issue. [2018]

Mr. Rubin: So far as we are concerned, that may go out.

Mr. Kenny: Don't you want that in, Mr. Margolis? That proves it is a labor union.

Mr. Margolis: Your Honor please, I meant that the entire exhibit should go out.

The Court: You said that there were some things in there that were material also in stating your objection.

Mr. Margolis: I am not going to ask for that to go out.

Mr. Rubin: We will stipulate that that is immaterial.

Mr. Margolis: Maybe I can help by pointing out what I had in mind.

The Court: I think I am getting along here.

I cannot see how this is material, anything in this is material to the issues in this case.

Mr. Rubin: If your Honor please, on the second page is the portion which we deem material, which reads as follows: "Motion made, seconded and carried that we elect an executive board of 11 members, two from Redondo and two from Santa Monica."

Underneath that appears: "Ballot for president. McComas 13, Bullo 9." And beneath that, "McComas elected."

McComas is one of the defendants in this case. That indicates that Mr. McComas was elected president of that union. We submit therefore it is material. That is the purpose of the document going in.

The Court: Then this ought to go over to the portions [2019] of documents which you want to admit in part because the rest of it is certainly not admissible.

Mr. Rubin: Yes, your Honor.

The Court: This second page?

Mr. Rubin: That is correct.

The Court: All right, Mr. Margolis.

Mr. Margolis: May I see 406 and 406-A, your Honor?

(The documents referred to were passed to counsel.)

Mr. Margolis: Now with regard to 406 particularly, I think it is covered by my general approach on the thing so I won't have to particularize, and we can make our motion to strike later on.

Now with regard to 312, there is a similar reference, about the middle of page 1, to Jeff Kibre. It is obvious on its face that he was not present. It is an invitation for him to come.

Our objection is on the ground that it is hearsay, not connected up with him.

The Court: Yes. That same ruling on that, that there will be a separate motion to strike.

Mr. Margolis: I understand. I just wanted to have it for the record.

Now if your Honor please, with regard to 314, we are particularly going to ask that the first portion of that, all of page 1 and the first portion of page 2, be stricken. That [2020] relates to an incident of some difficulty with the police.

* * *

Mr. Rubin: 314 should go in the partial.

The Court: How are you going to indicate that now—by dots or dashes?

Mr. Rubin: I will have Mr. Dixon indicate it. He is handling the handwriting.

The Court: By the red encirclement, is that it?

Mr. Margolis: Now, if your Honor please, with reference [2025] to 317, I will submit to the court that the first two paragraphs of that exhibit are unnecessary. Again they refer to an incident which would require a lot of explanation, which might be prejudicial, and which is not necessary. It refers to a veteran and anti-union complex, and it just seems to me it adds nothing, really, to the case, and we would feel obliged to have considerable explanation of that incident.

Mr. Rubin: What document?

The Court: 317. Document 317 is a peculiar document. I can't tell which is the first two paragraphs. It starts out on a line "Red Zentner reported inter"—that is in typewriting, and the rest of the words are in pencil. Somebody got tired of typing, I guess.

Mr. Margolis: It goes into a collateral issue again, your Honor.

Mr. Rubin: Do you wish to hear from me, your Honor?

The Court: Yes, surely.

Mr. Rubin: With respect to this document, if your Honor please, we submit that the portion indicated by counsel is material for this reason: these are minutes of Newport Beach, and as your Honor notes it states somebody interviewed Blackie Squires and Blackie said he would respect picket line and would sell to fair markets, but would not join the union.

The Court: Unless somebody antagonized him.

Mr. Rubin: That is correct. And then the next motion [2026] is that Squires be placed on probation for 30 days on the ground that he suffered—Lloyd Munson came in—on the ground he suffered from an anti-union complex due to his war experience.—Carried.

If your Honor please, we deem that is material for this reason: it indicates that they were practicing placing non-union men on probation with respect to their picket duty. We submit that that is material in this case. It is part of the proof that they agreed to prevent non-union persons from delivering fish to the markets.

Mr. Margolis: Well, assuming, your Honor, that that is correct, there is considerable other material in the minutes to the same general effect, that they asked non-union men—there is testimony, as a matter of fact, that they asked non-union men to

serve on the picket line, and they gave them clearance cards. There is testimony in the record to that effect. And this just gets us into a collateral issue, and there is a danger of prejudice.

The Court: That is no legal ground of excluding it if the government desires to press its admissibility. It is material under the indictment.

Mr. Margolis: It could be excluded, your Honor, on the grounds, at this point, that it is cumulative, and there is more danger of its being prejudicial than there is of it doing any good in this case.

The Court: I can't substitute my judgment for that of the government counsel as to whether it is prejudicial to their case.

Mr. Margolis: I say prejudicial to our case. There is a portion of it which is prejudicial to us without being relevant. I am particularly concerned about this question of veterans and anti-union complex due to war experience.

We would have to go in and explain what was meant by that. That is the part I have particular reference to, that is prejudicial to us.

The Court: You object to that "Moved and seconded that Squires be placed on probation for thirty days"——

Mr. Margolis: That is right.

The Court: From there on, that is what you object to principally?

Mr. Margolis: That is the principal thing.

The Court: "on the grounds he suffered from a anti-union complex due to his war experiences?"

Mr. Margolis: That is the main thing.

The Court: Do you have any objection to striking that out, beginning "on the grounds he suffered," and so forth, that paragraph?

Mr. Rubin: We have no objection to that going out, if your Honor please. Of course the word "carried" wouldn't mean anything. [2028]

The Court: All right. I will draw a green line around this to indicate that on Exhibit 317 the following words encircled in green will not be admitted: "on the grounds he suffered from a anti-union complex due to his war experiences."

Here it is, so if counsel intends to read it to the jury you will see my green mark.

Mr. Rubin: Yes, your Honor.

The Court: Do you see it?

Mr. Margolis: Yes.

Mr. Rubin: Perhaps counsel would have no objection to the matter being interlined by the court. We certainly have no objection. One reason we haven't marked these things before is——

Mr. Margolis: We do prefer to not have these minutes interlined.

There will be a problem to show these partial minutes to the jury. How is that going to be done?

Mr. Rubin: We just propose to read them.

The Court: The documents that are admitted in part should only be read to the jury.

Mr. Margolis: Very well. Next, your Honor, I want to refer to 203. That is toward the end, fifth or sixth document from the end.

The Court: Yes? [2029]

Mr. Margolis: I want to——

The Court: You are going over 332, 333——

Mr. Margolis: I have stated my general objections. I have nothing to add with regard to them.

The Court: Very well.

Mr. Margolis: With regard to 203, I want the objection that this appears to be a carbon copy, it is unsigned, there is no showing that it was mailed, and it is not connected up in any way with the issues in this case.

The Court: Whether it was mailed or whether it wasn't mailed it is admissible as an admission against interest made by Mr. Zafran, the foundation having been established. And that, it would seem to me, would be about as far as the probative value of this would go.

Mr. Margolis: Shall I proceed, your Honor?

The Court: Counsel here is waiting——

Mr. Rubin: We are not waiting on the court, your Honor.

The Court: All right. I think that 203 would be limited to that purpose, as an admission against interest only as to Gilbert Zafran. The objection will otherwise be overruled.

Mr. Margolis: Except as to an admission against Gilbert Zafran, I understood your Honor to mean that the objection would be sustained.

The Court: What I mean to say is this: That your [2030] general objections that you have made will be overruled. The specific and particular objections which you made just now that it does not show that it was mailed, that it was received, will be sustained; but it will be admitted in evidence as

an admission against interest only of Gilbert Zafran.

Mr. Margolis: Thank you, your Honor.

Mr. Rubin: Now, so that the record will be clear, just as many of these documents refer to specific defendants, this is just one of such documents.

The Court: I think you are correct, counsel, in that. It will be admitted in evidence as an admission against interest——

Mr. Rubin: Subject to a motion to strike?

The Court: Subject to a motion to strike as to any other defendants that might not be connected with it. In other words, I think we had better keep the record in that state until we get around to the point of determining whether or not a case has been made against anyone or all.

Mr. Margolis: I make the same objection with regard to 231, your Honor.

The Court: There will be the same ruling there.

Mr. Margolis: May I see 236?

The Court: I thought that was in evidence. There was some testimony that that was handed to somebody.

The Clerk: It is marked for identification, your Honor. [2031]

Mr. Rubin: If your Honor please, there is a duplicate, a carbon copy of that in evidence, which is the exhibit that went in through Mr. Ross, that was handed to Mr. Ross. That particular document was used in examination of Miss Evanisevich.

Mr. Andersen: That is the one we had the long fight about, I think.

The Court: What do you mean the long fight?

Mr. Andersen: I stand corrected, your Honor.

Mr. Kenny: "A."

Mr. Andersen: That is the same as 502, isn't it? No, I am sorry.

Mr. Rubin: If your Honor please, that document was offered because it was the subject of Miss Evanisevich's testimony that that document was dictated to her by Mr. Zafran who at that time was the business agent of the union.

Mr. Margolis: We object on the ground that it is cumulative. Of course, that is in our general objection.

The Court: Yes. That objection is overruled.

Now, you have stated your special objections to this batch that are offered in toto? [2032]

Mr. Margolis: Yes.

Your Honor, we are not quite ready with respect to——

The Court: To those offered in part?

Mr. Margolis: With respect to those offered in part.

The Court: On these that are offered in toto, the objections will be overruled—pardon me. Did you have something?

Mr. Rubin: If your Honor please, there are certain other exhibits which have been identified through other witnesses, some of which are also part of the stipulation. We might dispose of those at this time too.

The Court: Let us dispose of these that we started out with as a block here and then we will take those up as another block.

The Court: The objections are overruled except as indicated with the one exhibit as to the portion omitted and the other two exhibits for the limited purpose, and the following exhibits are admitted in evidence: 206, 207, 211, 212, 213, 214, 215, 216, 217, 219, 220, 225, 227, 401, 403, 404, 405, 406, 406-A, 311, 312, 317 which has the stricken portion, 328, 332, 333, 334, 203, which is admitted for the limited purpose as an admission against interest and not to show that it was mailed, 218, 231, the same limitation as 203, and 236.

* * *

(The documents referred to were received in evidence as indicated above and marked Government's Exhibits Nos.: 206, 207, 211, 212, 213, 214, 215, 216, 217, 219, 220, 225, 227, 401, 403, 404, 405, 406, 406-A, 311, 312, 317, 328, 332, 333, 334, 203, 218, 231 and 236.)

* * *

The Court: You asked if there were some other matters. You say that there are some other matters?

Mr. Rubin: Yes. These other documents which went in by other witnesses.

The Court which you have identified by other witnesses?

Mr. Rubin: Yes, your Honor. Do you want to consider [2034] those at this time?

The Court: I thought all the documents were in evidence except perhaps one.

Mr. Rubin: No. if your Honor please, those documents, for example, concerning which Mr. Agliano testified to, and also another document, No. 37, to the Bayside Fish Market——

The Court. That is the one that had the enclosure, 37?

Mr. Andersen: Yes, your Honor.

Mr. Rubin: That was withdrawn.

Mr. Andersen: That was withdrawn by Mr. Schwartz.

Mr. Rubin: That is right.

Then document No. 28 and 27 and 209, all of which were identified by Miss Evanisevich.

The Court: And they are on the stipulation?

Mr. Rubin: Not all of them, no, your Honor, because they all weren't produced.

The Court: In other words, you filed those and then you shifted from that method to the stipulation method?

Mr. Rubin: That is correct.

The Court: These are offered in full?

Mr. Rubin: That is right, your Honor. And you reserved ruling on some of them. [2035]

* * *

Mr. Margolis: I can go through these rather quickly, your Honor. Let me take these first.

With regard to the following documents which have been offered in part, your Honor: 301, 302, 303, 304, 307, 310, 313, 319, 320, 321, 322 and 504, we make the same objection to each and every part and the entirety of each of said exhibits as was made to the last series of exhibits.

We have some specific matters also to take up with respect to them.

The Court: Let's see, 301 are minutes, 302 are minutes, 303 are minutes, 304 are minutes——

Mr. Margolis: They are all minutes, your Honor.

The Court: They are all minutes?

Mr. Margolis: Yes, your Honor.

The Court: And they are all minutes of Newport Beach except 504?

Mr. Margolis: That is San Diego.

The Court: That is San Diego minutes?

Mr. Margolis: Yes.

The Court: I thought 504 was already admitted in evidence.

Mr. Rubin: No. your Honor.

Mr. Andersen: I don't believe so.

Mr. Margolis: In the series that I started with, your Honor, from 301, did I skip any?

The Court: Yes, 305 and 306.

Mr. Kenny: The Government isn't offering 305 and 306.

Mr. Margolis: I mean, did I skip any of what the Government has offered?

The Court: Just a moment. 311 they offered.

Mr. Andersen: Not in this group, your Honor.

Mr. Kenny: That was in toto.

The Court: That is right. That is in toto.

319 they did not offer—wait a minute. Maybe it is over on the next page. [2037]

Mr. Kenny: No. they didn't offer 319.

The Court: No, they did not offer 319.

Mr. Margolis: It is marked up.

The Court: They offered 313.

Mr. Margolis: I withdraw the objection to 319 then.

Mr. Rubin: I am sorry, if your Honor please. Our copy is marked up too, so it should be on the list.

The Court: It isn't.

Mr. Margolis: Are we treating that as offered or out?

The Court: It is not offered.

Mr. Rubin: Then at this time, if your Honor please, we offer 319.

The Court: On the same basis?

Mr. Rubin: Yes, your Honor.

The Court: All right. I will put it on here.

Mr. Kenny: In all or in part?

Mr. Rubin: In part.

Mr. Margolis: It has been marked up.

The Court: 504 and 505 is in.

That seems to be all of the series of partials in the 300 and 500 series. It is not in the 200 or 400 series.

Mr. Margolis: Yes. I have to take those up separately because they were marked differently and I got confused.

The Court: Very well. Now on these you make the same objection that you did before? [2038]

Mr. Margolis: Yes, your Honor. And in addition I want to ask specifically with respect to 304, page 3, your Honor—

The Court: Does somebody have a carbon copy of that or photostatic copy or some kind of a copy?

(The document referred to was passed to the Court.)

Mr. Margolis: There is a paragraph, a short sentence, reading: "A Jap fish peddler named Endo with red truck went through. Watch him." We would like to have that eliminated because we think it might be prejudicial as far as one of the jurors is concerned, and it is not necessary to prove the Government's case. It is cumulative. We see a danger of creating a prejudice on a matter which has no relation to any issue in this case as against the defendants that is greater than any probative value that this might have, particularly in view of the fact that it is cumulative. [2039]

Mr. Rubin: We will stipulate that sentence may go out.

Mr. Dixon: We feel it is material, but we nevertheless will agree to take it out if counsel wants it out.

The Court: What are you doing about it now?

Mr. Margolis: This is my copy, your Honor. Where is the original?

The Court: We just handed you the originals, the clerk did.

Mr. Kenny: I have it.

Mr. Margolis: I am pretty clear on these. It is the other group I am mixed up on.

The Court: All right. Just a moment now. I will draw a green line around it, which means leave it out.

Mr. Margolis: We want to ask that if they are admitted if our objections are overruled, we want to ask that certain additional parts be admitted.

The Court: Your general objections will be overruled.

Mr. Margolis: Then, if your Honor please, we ask, with regard to 301, that the omitted portion on page 1—when I say “omitted portion,” the part marked for omission.

The Court: Encircled in red, yes.

Mr. Margolis: Be admitted as part of the exhibit.

The Court: All of it?

Mr. Margolis: All of the portion on page 301 which is marked in red. And so our offer may be complete, we [2040] also offer each and every sentence and paragraph thereof.

The Court: I don't think it is material, counsel. Your objection is overruled, with the privilege to you to offer it. I don't see how it is material even if you offer it yourself. I can't see how it can effect the controversy.

Mr. Margolis: As to 304, we ask that the omitted part on page 1 thereof be made a part of the exhibit.

In each of the instances where we make an offer of this kind, or request, will it be understood that we make it as to the entire part of the minutes and as to each and every sentence and paragraph?

The Court: Surely. I think that the objection should be overruled on that, with the privilege, however, to offer it in evidence by the defendants. That is 304, the encircled portion. All right. Next?

Mr. Dixon: Pardon me, judge. I think you have our copy of 304. If we may borrow it back for a minute.

The Court: They object to the introduction of the document unless that is also admitted.

Mr. Dixon: The part we have excluded?

The Court: Yes; that opens up the same argument that we had with Ross.

The objection is overruled. Let's pass on.

Mr. Rubin: I don't think the record is clear on this point. [2041]

The Court: Whatever the record shows, the defendants' objection as to 304 is overruled.

Mr. Margolis: 307, if your Honor please, and the omitted part on page 1.

The Court: "Commend Col. Hunter's letter to Commander Bennet. Housing Act hearing." I can't see the materiality of this. Objection overruled.

Mr. Margolis: With regard to 310, if your Honor please, to the omitted part, we ask that the omitted parts on pages 1 and 2 be included as part of the exhibit.

The Court: "Joe Doakes, registration committee, reports that the letters are being mailed to the union members on the small boats and fresh market fishermen."

I don't know. I suppose the Government must know what the letters are. It certainly is not plain from this what is meant.

Mr. Margolis: If that were the test, your Honor, there would be an awful lot of exhibits that wouldn't get in. As a matter of fact, It is one of the grounds

of our objection, that there are many parts of these exhibits which are ambiguous yet they have been admitted in evidence.

The Court: It looks to me like both of those—I suppose they must have something to do with the strike. I haven't read the rest of these minutes of the particular area with the idea in mind to see if they had appointed a registration committee. I notice the rest of them at the beginning of the strike appointed a registration committee and different [2043] committees.

It looks to me like both of those could very well go out.

“Moved and seconded central executive board be contacted in regard the action planned when albacore show at San Pedro.”

Mr. Dixon: Your Honor please, we are more concerned perhaps about this letter that Joe Doakes refers to. Frankly, we do not know what that letter refers to. We have not a copy of it.

The Court: I will overrule the objection on that and sustain the objection as to the second paragraph, that is to say, I will admit 310 in its entirety except the paragraph beginning “Joe Doakes.”

Mr. Margolis: With regard to 313, your Honor, we ask that the omitted portion on page 1 thereof be made part of the exhibit.

The Court: It looks to me like all that is material.

Mr. Dixon: Prior to the introduction of that part, “discussion and reading of the proposal entirely accepted by the San Pedro dealers”——

The Court: Just a moment now. 313?

Mr. Dixon: Yes, your Honor. Do we have the same exhibit, page 1?

The Court: 313 appears to be page 1 and the encircled portion begins "Phelps suggested we dispense with two of the morning pickets and have those men work their shift out of [2044] contacting boats and crews on the waterfront, one from Hip Hip Hooray, one from (something or other) and one from skiff. Take pamphlets and cards, tack on boats when crews are not aboard. Members answered it was up to the picket captain to use his own discretion in choosing his men. Moved and seconded we accept the report as read with commendation for his action. Question on how to handle prospective members, new fishermen. Discussion and reading of the proposal tentatively accepted by the San Pedro dealers." Is that it?

Mr. Dixon: That is right.

The Court: That is the portion you object to?

Mr. Dixon: That is right.

The Court: I think probably that will be. The rest of it is admissible and should be included, I think.

Mr. Margolis: Your Honor please, this is all part of the same——

The Court: You can introduce it.

Mr. Margolis: All right.

The Court: So I will re-change that red line here. In other words, 313 is admitted in its entirety except the paragraph consisting of two lines be-

ginning with the word "discussion" and the next paragraph beginning with "general discussion."

All right.

Mr. Margolis: 321, your Honor, is the next one I want [2045] to refer to. We ask the omitted portions on pages 1 and 2 be made part of the exhibit.

The Court: The objection is overruled. 321 is admitted, subject, of course, to the defendants' right to introduce the other part.

Mr. Margolis: 322, your Honor, we offer the omitted part on page 1.

The Court: The objection is overruled, with the right of the defendant to offer it.

Mr. Rubin: Just a second. "Reading of previous minutes"—apparently what defendants may endeavor to do in admitting this is to put in the previous minutes as part of our case, and that is what we object to.

Mr. Margolis: We don't care about that.

Mr. Rubin: We want to know.

Mr. Margolis: I am making that statement.

The Court: This document here—in other words, on the basis that when a portion of a document is in evidence the rest of it can be admitted, this document here can be in evidence. "Reading of previous minutes"—there is nothing in this document to identify what the previous minutes are. The previous meeting might have been a year before.

Otherwise, do you consent that the whole may go in?

Mr. Dixon: We don't have this letter referred to here.

The Court: The letter doesn't appear there. I will sustain the objection. I mean I will overrule the objection.

Mr. Andersen: Might I state that the court's rulings [2047] will look a little indefinite in the record? I wonder if they could be phrased in some different way. Mr. Margolis is offering additional parts.

The Court: I understand that.

Mr. Kenny: Probably it should be: motion denied.

The Court: No, he is not offering additional parts at this time. He is objecting to the introduction of it unless the whole is introduced. I am overruling his objection, subject to his offer or his motion to offer it in behalf of the defendants.

Mr. Kenny: I think that statement of the court clears it up.

The Court: If I granted his motion or denied his motion, I would be denying in advance, it seems to me, a motion which he has not yet made.

Maybe the defendants won't want to offer these when they get around to it.

Mr. Margolis: With regard to 504, your Honor, there are typewritten and then there are written minutes which appear to be—the typewritten seems to be a copy of the written. Do you have both?

The Court: No; I just have the typewritten.

Mr. Margolis: All right.

The Court: These are the ones that were identi-

fied by the cigar maker. The only thing you want in is Frank Agliano [2048] was placed under \$5,000 bond?

Mr. Andersen: Was elected and placed under bond. That is what the government wants.

The Court: Is that all you want in?

Mr. Rubin: That's right, your Honor.

The Court: That disposes of those. Now, what remains?

Mr. Margolis: With regard to 201, 205, 204, 202, 224, 226, 230——

Mr. Rubin: 228?

Mr. Margolis: Is 228 one of those?

The Court: 202, 224, 225—26, I guess that is.

Mr. Margolis: I have no 225, your Honor.

The Court: 226, 228.

Mr. Margolis: Is 228 one of those?

The Court: Yes. And 230 and 233.

Mr. Kenny: Those are all minutes, aren't they?

The Court: Yes, these are all minutes except one, but the government is offering only the parts indicated by red dots.

Mr. Margolis: That is where I got confused on it. It seems to me before we conclude that we ought to have all of these inclusions and exclusions marked in the same way, or it is going to be a very confusing thing.

The Court: The reason, apparently, why this was done is two different men did it, and in the second place these [2049] are typewritten and the others are written in hand.

Mr. Margolis: I am not saying this as a matter

of criticism, your Honor, but as a matter of knowing what we have when these exhibits get all mixed up, as they are likely to in arguing and so forth, we are likely to get into difficulty.

The Court: All right. Then what I will direct when these are admitted is that the clerk shall encircle in red the excluded portion of the minutes, so that they will be the same as the other.

Mr. Margolis: Very well. We will be able to do that on ours also.

With regard to these exhibits, your Honor, we make the same objection——

The Court: Pardon me. On exhibits that you have just mentioned, the ruling will be that as to the names indicated in each one they will all be admitted in evidence and will not be limited only to the names with the dots beside them.

Mr. Margolis: You mean the names of members present?

The Court: The names of persons who were present at the meeting. It is indicated "members present" in one, and in some just "present."

Mr. Margolis: We make the same objections that have previously been made with regard to the other exhibits to each of these exhibits and each and every sentence and paragraph. [2050]

The Court: The general objection will be overruled. [2051]

* * *

Mr. Margolis: Incidentally, I think I omitted 203, did I not?

The Court: 203 doesn't seem to be here.

Mr. Andersen: There is no 203.

Mr. Rubin: 203 went in in its entirety. It was specially admitted.

Mr. Margolis: What is the second numbered one?

The Court: That is 205.

Mr. Margolis: All right.

Mr. Margolis: On your 201, the objection is overruled. 201 is admitted as indicated by the red check marks, and if Mr. Rubin is familiar with the exclusion method of Mr. Dixon and you made these, if you will draw the red circle around the excluded portions.

Mr. Margolis: I am sorry. Your Honor said 201 is admitted?

The Court: The objections are overruled and 201 is admitted as to those on the original here which has red check marks. I will just draw a red circle around the excluded portions.

Mr. Rubin: If your Honor please, there is one slight change on this document which may clarify it somewhat. Do you have the original there?

The Court: Yes.

Mr. Rubin: Mr. Margolis, I am now erasing the original [2052] check mark appearing on page 2 of that exhibit.

Mr. Margolis: In other words, you are offering all of page 2?

Mr. Rubin: There is no part of page 2 which is now offered. We are not offering any portion of page 2.

The Court: All right. Page 2 is out.

205? I suppose you make the same objection.

Mr. Margolis: On 205 we make the same objection to the last two paragraphs.

Mr. Dixon: 202 and 204 seem to be offered.

Mr. Margolis: Their order seems to be reversed. They follow.

The Court: Yes; 201, 202, 204, 205.

Mr. Margolis: Has your Honor ruled on 205?

I put 202 out of order.

The Court: Very well.

Mr. Margolis: On 202, your Honor, we object to it on the additional ground that there is no showing that the document was mailed or received by anybody. It is an unsigned document.

The Court: The foundation establishes that it was a part of the records of the business. The objection will be overruled and it will be admitted except for the portion encircled in red. In other words, the red checked paragraphs are admitted. [2053]

204? It seems to me that they have offered that whole document because there is a red check beside every paragraph.

Mr. Rubin: No, your Honor. There is one slight omission.

The Court: I see.

Mr. Margolis: What is the omitted portion?

The Court: "Moved, seconded and carried that the strike committee ascertain whether we are within the law in taking economic action on Thursday, May 23, 1946."

Mr. Margolis: We ask that the entire document be admitted.

The Court: Do you ask that the entire document be admitted or do you object unless the whole document goes in?

Mr. Margolis: We ask that if any part of the document goes in the entire document goes in.

The Court: Your objection is overruled. The document will be in except for the portion encircled in red.

Mr. Margolis: I want it understood, I have perhaps in stating my objections not stated them as well as they might be, but we do not intend to waive any of our objections to the admission of these documents. It is our intention that if they are admitted to ask that additional parts be admitted as well.

The Court: We haven't gotten to that stage of the proceedings yet. [2054]

Mr. Margolis: As a condition of the admission of the parts offered by the Government.

The Court: On 205, you say the last two paragraphs on the second page?

Mr. Margolis: We ask that those be included.

The Court: "We notified the International office of the conditions here and request their financial, moral and economic support." What is wrong with including that? It doesn't have anything to do with the strike particularly. I think it is immaterial. The objection to 205 will be overruled. I will draw a red line around the paragraphs that are omitted.

Mr. Margolis: On 224, we ask that if the document is admitted that it be admitted in its entirety.

The Court: No. Same ruling.

Mr. Margolis: Same motion with regard to 226.

The Court: The only portion of that that is omitted is one sentence. It will be the same ruling, and I will draw a red line around the omitted portion. 228, that came in for identification, I believe.

Mr. Margolis: Your Honor please, I do not have a copy of that.

The document referred to was passed to counsel.)

The Court: They are excluding the same general textual matter in that.

Mr. Margolis: We make the same motion, if your Honor please, as a condition of the admission of any part of the document that it be admitted in its entirety. [2055]

The Court: The objection is overruled and the document will be admitted with the encircled portion in red excluded. 230?

Mr. Margolis: Same motion, your Honor.

The Court: Same ruling.

Mr. Margolis: Same motion with regard to 233, your Honor.

The Court: It will be the same ruling.

Mr. Margolis: I think that as far as I can tell we have covered all of them, but I am not sure.

The Court: I think so.

Mr. Margolis: If we haven't, I want the record to show that as to any of those that we haven't listed and stated our objections to, we reserve our objections because with this number of exhibits it is possible to overlook one.

Mr. Rubin: I will call them into the record. With respect to documents Nos. 209, 508, and 503, they are listed in the stipulation, and document No. 28 being produced by the defendants I will ask counsel to stipulate that that also is included in the stipulation.

* * *

Mr. Margolis: We do not object as far as foundation is concerned, but we do have other objections. [2057]

The Court: Yes, I understand that. In other words, you accomplish the same effect as you have in your stipulation, and we don't want to get the stipulation mixed up any.

Mr. Margolis: With regard to 28 we object to it being admitted on the ground that there is no showing—I better state them separately. As to 503——

The Court: That is the telegram that somebody identified.

Mr. Margolis: There is no showing that this was ever received by the defendant Ray Morkowski, and if it is admissible at all it is admissible only as an admission against interest.

The Court: Objection overruled. The witness identified that as being in the records of the union in San Diego.

Mr. Margolis: That doesn't show Ray Morkowski received it. Somebody else might have received it and Ray Morkowski never have received it.

The Court: It might be stricken as to all of the others later, but in the present position it is admissible as against all of them.

(The document referred to was received in evidence and marked Government's Exhibit 503.)

Mr. Margolis: If your Honor please, we make the same objection, that there is no showing that the document was either mailed or received, as to Exhibit 28. And on both of these, 28 and 503, that they are irrelevant and immaterial. [2058]

Mr. Rubin: As to No. 28, if your Honor please, there is additional foundation testimony from Miss Evanisevich concerning the practice of taking dictation from Mr. Zafran and placing a copy in the——

The Court: As to 28 the objection is overruled. It is admitted.

(The document referred to was received in evidence and marked Government's Exhibit 28.)

Mr. Margolis: Same objection, your Honor, with regard to 209, 210——

The Clerk: 210 was not listed.

The Court: 503 is admitted. That is the telegram.

Mr. Margolis: 210 is marked for identification.

The Court: The clerk handed me another document here now. 503, that is the one I ruled on a moment ago.

Mr. Margolis: The clerk said 210 wasn't mentioned.

Mr. Rubin: Well, 210 should be included. It has heretofore been marked for identification.

Mr. Margolis: With regard to 209, 210, and 508, we object on the ground that there is no showing that the originals of these letters or any copies thereof were either signed or mailed or dictated by any of the defendants herein; also there is no showing that they were received by any of the defendants, and therefore they are not connected up with any of the defendants. [2059]

* * *

The Court: The objection is overruled. They are admitted.

(The documents referred to were received in evidence and marked Government's Exhibits 209, 210 and 508.)

* * *

Mr. Rubin: There is one other document here. Mr. Margolis, you saw No. 27? That was not produced by the defendants.

Mr. Margolis: Yes, there is no stipulation as to this. The same objection as to the previous document, except that it does appear to be a signature, but it hasn't been identified.

Mr. Rubin: If your Honor please, that was the subject of the testimony of Miss Evanisevich.

Mr. Margolis: That is right. the signature has been identified, but there is no showing that it was mailed or received. [2060]

The Court: Objection is overruled, the document is admitted. No. 27.

(The document referred to was received in evidence and marked Government's Exhibit 27.)

* * *

Mr. Rubin: We have the question of the membership cards. Do you want to dispose of that, your Honor? It might be a good time to, because one of our witnesses may have some testimony concerning the cards. We would like to know if they will be in evidence. It is subject to the stipulation.

The Court: That is to say, they will be returned immediately upon the conclusion of the trial?

Mr. Rubin: It is subject to the foundation stipulation.

The Court: Oh, the foundation stipulation?

Mr. Margolis: Yes, it is stipulated that they are what they appear to be, they are application cards. We object to them on the ground they are incompetent, irrelevant and immaterial. And, as a matter of fact, one of the instructions offered by counsel for the government points out that mere association is not a basis for incriminating anyone, and I don't see what other useful purpose these exhibits could serve. [2061]

* * *

Mr. Margolis: If your Honor please, with regard to 314, without repeating all of the objections previously made with regard to the other exhibits, may it be deemed that the same objections are made to 314? May that be done?

The Court: That will be satisfactory, without repeating them all. Let me look at it.

* * *

The Court: 314 will be admitted in its entirety, and the defendants' objections to it will be overruled, except as to the defendant Sherman, and his objections will be sustained on the ground there is no foundation as to the defendant Sherman.

402?

Mr. Margolis: With regard to 402, we make the same objections as with regard to all the other documents, your Honor. In addition, the objection of remoteness, in that it is not tied in with this case. That exhibit is one of those which shows election of officers at some time prior to the incident involved in this case. There is no showing that those officers continued to be officers.

Mr. Rubin: Of course, under counsel's theory, if your Honor please, it would be necessary to introduce evidence that at the precise moment he was an officer, and that he had not resigned the instant before. [2087]

Mr. Margolis: No, your Honor. I think if there were in evidence a set of minutes in which it showed that so-and-so had been elected as president to serve for the term of one year, then I think that there would be a showing, but where it merely shows that there is an election, and no showing of any term or period for which the officer was elected, I think there is no showing.

The Court: Well, of course these must be read in connection with the subsequent minutes which

were introduced as to that. That goes to their evidentiary value and not, I think, to their admissibility.

This document, the general objections to it are overruled, and it seems to me that all of the document except this portion over here on the last page about chairman of the entertainment committee, and the Fish and Game, and so forth, ought to go in. It seems to me this document ought to go in in its entirety except the last page, which is excluded in its entirety but for the signature of H. A. McKittrick, and that will be the order of the court. 402 will be admitted except the last page, and the signature there is admitted. [2088]

* * *

Mr. Rubin: As to Government's Exhibits 24 and 25 for identification, being the fish weights of the Los Angeles-Seattle Motor Express——

* * *

Mr. Margolis: No. I just wanted to state, your Honor, that we have had an opportunity to examine the records and we have no objections as to lack of foundation with regard to these particular documents.

There is an understanding between ourselves and counsel that when we put on our case we will be permitted to put on certain other compilations—I say permitted to put in—there will be no objection to lack of foundation as to certain other compilations taken from the same books subject, of course, to the right of the Government to check the accuracy of those compilations.

* * *

Mr. Rubin: I have reference now to Exhibits Nos. 42, 43, 44 and 45, being the membership application cards of the various units, which your Honor also reserved ruling on.

* * *

With the exception of Mr. Sherman, these are all subject to the stipulation heretofore entered into between counsel for the rest of the defendants.

The Court: Some of these appear to be pretty remote, counsel. Here are some cards in 1943. San Pedro Local No. 33; it appears to be a different union. [2090]

Mr. Rubin: They may have used other application cards at that time.

Mr. Andersen: 33 is a different local union, your Honor.

The Court: There are a number of them here.

Mr. Rubin: These were all produced by the defendant Local 36. There will be subsequent to this offer, if your Honor please, an offer of the ledgers of the various units.

The Court: Are these ledgers?

Mr. Rubin: Those are application cards to which ledger sheets are attached. Of course the purpose of the exhibit is to show the nature of the organization under our theory that they are self-employed individuals who in great part are members of the organization.

The Court: That is the purpose of it?

Mr. Rubin: Yes, your Honor.

The Court: I notice here some of them have "permit number," "no initiation fee," "permit,"

“permit,” “book,” “card.” Now in view of the testimony concerning permits to fish being issued by the union during the period of the strike, is this offered for that purpose?

Mr. Rubin: No, your Honor; it is not.

The Court: These are offered solely for the purpose of showing——

Mr. Rubin: The nature of the organization.

The Court: ——nature of the [2091] organization?

Mr. Rubin: That is correct, your Honor.

The Court: I see.

Mr. Rubin: And in that connection we at this time further offer——

The Court: That is, 42, 43, 44 and 45?

Mr. Rubin: That is correct.

Mr. Garret: Same objections, your Honor.

Mr. Margolis: We object to them as irrelevant and immaterial.

The Court: Same objections you have advanced before?

Mr. Margolis: Yes.

The Court: The objections of the defendant Sherman as to foundation is sustained; all other objections are overruled.

Mr. Rubin: If your Honor please, with respect to the defendant Sherman in this connection, the San Diego cards, Exhibit No. 45, have been identified by Mr. Agliano as being the documents produced from that unit.

Mr. Garrett: There is no connection with him shown for his name is not in the exhibit.

The Court: I do not think there is sufficient connection there.

(The documents referred to were received in evidence and marked Governments Exhibits Nos. 43, 44 and 45 respectively.) [2092]

Mr. Rubin: Now with respect to Government's Exhibits 42-A, 42-B, 43-A, 43-B, 44-A, 44-B and 45-A for identification, we offer those into evidence as being the membership ledgers of the various units of the defendant Local 36.

* * *

The Court: They are for the same purpose?

Mr. Rubin: Yes, your Honor.

The Court: All right. I suppose the same objections are advanced?

Mr. Garrett: Same objection, your Honor.

Mr. Margolis: Same objection.

The Court: Same ruling.

(The documents referred to were received in evidence and marked Exhibits Nos. 42-A, 42-B, 43-A, 43-B, 44-A, 44-B and 45-A respectively.)

Mr. Rubin: We herewith offer Government's Exhibit 46 for identification, which consists of the membership ledger cards and membership application cards of the Redondo unit.

I might state, if your Honor please, inadvertently those books were just produced to the government a day or two ago and that is the reason they are not included in the list.

The Court: Are they offered for the same purpose?

Mr. Rubin: They are offered for the same purpose, your Honor. [2093]

The Court: Same objections?

Mr. Margolis: Yes.

It is understood that although it does not state so in the stipulation that the stipulation is subject to those objections?

Mr. Rubin: Yes.

Mr. Garrett: Same objection, your Honor.

The Court: I haven't seen any stipulation yet.

Mr. Margolis: I am sorry. I thought counsel had submitted it.

(The document referred to was received in evidence and marked Government's Exhibit No. 46.)

Mr. Rubin: If your Honor please, we offer a stipulation covering the exhibits just admitted, being numbered 42, 43-A, 42-B, 43, 43-A, 43-B, 44, 44-A, 44-B, 45, 45-A and 46.

* * *

Mr. Rubin: And we herewith present the stipulation to your Honor for your Honor's perusal and approval.

(The document referred to was passed to the Court.)

Mr. Margolis: With respect to that stipulation, your Honor, we make the statement that we signed the stipulation with the understanding that it was subject to the usual objections as to materiality and relevancy. [2094]

Mr. Rubin: And not as to authenticity or foundation.

The Court: Very well. The stipulation will be approved and filed.

* * *

Mr. Rubin: With respect to paragraph 4 of the stipulation, your Honor please, we may present such summaries before the government rests its case, but we reserve the right in any event to present them after with the same force and effect as though we had presented them during the government's case.

Mr. Margolis: That is agreeable. [2095]

* * *

(The jury returned to the courtroom at 11:30 o'clock a.m.)

* * *

Mr. Rubin: At this time, if your Honor please, the government desires to offer Government's Exhibits 24 and 25 heretofore marked for identification into evidence.

Mr. Margolis: Your Honor please, in connection with those documents, we have had an opportunity to examine the books and we have reached an understanding with counsel that when we present our case we will also have certain summaries to offer, as to which there will be no objection as to the foundation, subject of course to the right of the government to check and subject to objections that the government may have as to materiality and relevancy.

The Court: Your accountant has examined the books from which these records have been compiled?

Mr. Margolis: Yes, your Honor. [2096]

* * *

The Court: The objection of the defendant Sherman is overruled. No. 24 and 25, 24 being a compilation of fish weights of the—what is the name of that?

Mr. Rubin: West Coast Fast Freight is one and Los Angeles-Seattle Motor Express is the other.

The Court: And likewise 25, being compilations of those figures, are admitted in evidence.

Mr. Rubin: Now, if your Honor please, at this time we offer as a group such documents marked for identification as were offered on last Friday before your Honor. Do you desire me to read the specific numbers or might they be received as such?

The Court: I think perhaps we had better make a statement as to all of the numbers, including those offered this morning, and then counsel can object on the grounds stated from out of the presence of the jury.

Mr. Margolis: I thought those documents were already admitted. [2097]

The Court: They haven't been admitted in the presence of the jury. Is there any objection, if he wishes to go ahead and read them as admitted?

Mr. Margolis: We don't want to waive the objections which we made, your Honor, but we see no necessity of going through the whole procedure again and taking up time. We certainly will not

object on the ground that we don't go through the procedure that we followed already.

Mr. Rubin: As I understand, the record will show, if your Honor please, that it will be deemed that the offer heretofore made on Friday will be deemed to be made in the presence of the jury and your Honor's ruling the same as if in the presence of the jury. Is that satisfactory?

Mr. Margolis: We will so stipulate.

Mr. Garrett: So stipulated.

The Court: Very well. That will be the order of the Court.

The long and short of it, so that the jury will not be confused about the matter, the government had a long series of exhibits and the defendants stipulated with the government that they need not lay any foundation concerning the documents, that is to say, have somebody testify that they were present and saw somebody write something on a piece of paper on such and such a day. On Friday I heard the other objections [2098] which the defendants had to offer concerning the documents and have ruled on them and have admitted them in evidence. This morning I heard further objections to further documents and have ruled on them and admitted them into evidence.

The documents which the government counsel is now about to read——

Mr. Rubin: After the next witness.

The Court: After the next witness—well, there is a long series of them, but he will indicate them

to you—are not admitted as against the defendant Sherman. They are admitted as against all other defendants but not as against the defendant Sherman. [2099]

Mr. Kenny: Your Honor, would you mind adding that all of these documents are not presented in their entirety? Some of them are and some the government is only offering a portion.

The Court: All right. The documents are various things. They are principally minutes of meetings. The government offered in some instances the minutes of the entire meeting, in other instances they offered only portions of the minutes of meetings which they deem material, and I have ruled on them; so that counsel will indicate as he reads the document to the jury whether or not it is the entire minutes of the meeting, or only a portion of the minutes of the meeting. In other words, I overruled the defendants' objection concerning the portions not admitted, and have admitted only those portions on the ground that they are material, and the government has the right to limit the cross examination and limit their materiality, but admitted them thusly without prejudice to the right of the defendants if they desire to introduce the rest of those minutes when their time comes either now or later.

Mr. Rubin: Call Mr. Kovacevich. [2100]

DINKO KOVACEVICH

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Rubin:

Q. Mr. Kovacevich, what is your business or occupation, sir? A. I am a fish dealer.

Q. What is the name of your company?

A. Star Fisheries of San Diego.

Q. Where are you located?

A. 955 Harbor Drive, San Diego.

Q. What is your connection with that business?

A. I am copartner, co-owner.

Q. Who is your other partner?

A. Vincent Petrasich and Sam Berch.

Q. Were you co-owner of that business during 1946? A. Yes, I was.

Q. What are your duties in the office of the business?

A. I don't have any specific duties in the office of the business, but generally all the matters pertaining to the [2101] office I take care of.

Q. I call your attention to Government's Exhibit No. 47, for identification, and ask you if you have ever seen that document before.

A. Yes, I have.

The Court: 47?

Mr. Rubin: Yes, your Honor. That is the next in sequence.

(Testimony of Dinko Kovacevich)

The Court: All right.

Q. (By Mr. Rubin): Was that document ever in your possession? A. Yes, it was.

Q. How did it come into your possession?

A. By mail.

Q. Do you recall whether there was any enclosure with that document?

A. Yes, it was.

Q. I show you Government's Exhibit No. 3 in evidence, and ask you if you recognize not that document but the material that is contained in the document.

A. Yes, I would recognize this as enclosed with this letter.

Q. That is, a copy of Exhibit No. 3 was an enclosure to Government's Exhibit No. 47?

A. That's right. [2102]

Q. And you received that in the mail at San Diego, is that correct. A. Yes, I did.

Mr. Rubin: No further questions.

The Court: Cross-examine.

Mr. Rubin: At this time, if your Honor please, we desire to introduce Government's Exhibit No. 47 into evidence.

* * *

The Court: The objection is overruled. Admitted in evidence. No. 47.

(The document referred to was received in evidenced and marked Government's Exhibit No. 47.) [2104]

* * *

Mr. Rubin: Ladies and gentlemen of the jury, I am about to read to you either all or portions of certain documents which have now been admitted into evidence in this case, and I will indicate to you those documents which I am reading from only partially and those which I am reading in their entirety.

The Court: Call the exhibit number.

Mr. Rubin: I now read from a portion of Government's Exhibit 411 entitled "Joint Executive Board Meeting."

The Court: You mean you are reading the portion admitted in evidence?

Mr. Rubin: Yes, your Honor.

The Court: All right.

(Whereupon, counsel read from Exhibit No. 411 to the jury.)

Mr. Rubin: I now read a portion of Government's Exhibit 238, the entire exhibit having been admitted into evidence.

(Whereupon, counsel read from Exhibit No. 238 to the jury.)

Mr. Rubin: I now desire to read a portion of Joint [2105] Central Council Meeting IFAWA, Local 36, March 2, 1946, Government's Exhibit No. 230:

"Following members present: Charles Mc-Lauchlan, Chairman; Art Hill—Newport Beach."

I don't believe Mr. Hill has been identified yet in this case, if your Honor please. Mr. Hill, will you stand up?

(The defendant Hill stood up.)

The Court: Yes, he has been identified. [2106]

* * *

I now read Government's Exhibit 231.

(Whereupon counsel read from Exhibit No. 231 to the jury.)

Mr. Rubin: That is a carbon copy of a letter. I read a portion of Government's Exhibit 201:

"Barracuda conference April 18, 1946.

"Members present:" [2107]

* * *

The Court: I do not know that Mr. Kibre has been identified to the jury as yet.

(The defendant Kibre stood.)

The Court: Very well.

Mr. Rubin: Government's Exhibit 202, a portion of which reads as follows: [2109]

* * *

I will now read Government's Exhibit 203, being a carbon copy of a letter, and I will read it in its entirety.

(Whereupon counsel read from Exhibit No. 203 to the jury.)

I will now read all of Government's Exhibit No. 27 in evidence. It is on the letterhead of the International Fishermen & Allied Workers of America.

(Whereupon, counsel read from Exhibit No. 27 to the jury.) [2110]

* * *

Mr. Dixon: May it please the court, and ladies and gentlemen of the jury. I will continue to read from the documents admitted in evidence, and unless otherwise stated the document has been admitted in evidence in its entirety.

Exhibit 508, a carbon copy of a letter addressed to the People's Fish Company, San Diego, California, bearing the typewritten signature of R. J. Morkowski, Business Agent, with the notation "Copies to: Bregante's Fish Company, Star Fish Company, Chesapeake Fish Company, Union Fish Company, San Diego Fish Company." It reads as follows:

(Whereupon counsel read from Exhibit No. 508 to the jury.)

Mr. Dixon: Exhibit 47 on the letterhead of the International Fishermen and Allied Workers of America, bearing at the top on the righthand side the typewritten name Floyd Sherman, with the printed name designation of "President" to [2112] the left, Business Agent R. J. Morkowski, date May 17, 1946. To the Star Fish Company, 955 West Harbor Drive, San Diego, California.

(Whereupon counsel read from Exhibit No. 47 to the jury.)

Mr. Dixon: Partial 301. Regular meeting of the Newport Fishermen, dated May 20, 1946.

* * *

Exhibit 409, undated, San Diego unit Southern California Fishermen, Local 36. [2113]

* * *

In part:

San Pedro minutes, membership meeting, dated May 21, 1946, Local 36.

"Gilbert Zafran, President.

"Harvey E. Spencer, Recording Secretary.

"The meeting opened at 1:30 p. m. by the president."

Mr. Andersen: What is the number of the exhibit?

Mr. Dixon: 204. [2116]

* * *

Exhibit 205, partial:

Minutes of joint executive meeting, dated May 25, 1946, of Local 36. [2117]

* * *

Partial minutes of the Newport special meeting, Fishermen's Union Local 36, May 27, 1946, Exhibit 302: [2119]

* * * *

Exhibit 401, Redondo Unit:

(Whereupon counsel read Exhibit 401 to the jury.)

206. Strike committee meeting. May 27, 1946.

(Whereupon counsel read from Exhibit 206 to the jury.)

403. Minutes of special meeting, Santa Monica Unit, Local 36, Tuesday, May 28, 1946.

(Whereupon counsel read Exhibit 403 to the jury.) [2121]

* * *

Mr. Dixon: Reading from Exhibit 303, partial:
"Minutes special meeting Fishermen's Local 36.
May 29, 1946. [2122]

* * *

Exhibit 207, San Pedro minutes, strike committee meeting, [2124] date May 30, 1946:

(Whereupon, counsel read from Exhibit No. 207 to the jury.)

The document also contains a list of the boats to be notified.

Exhibit 208, strike committee meeting, San Pedro Unit, Local 36, May 31, 1946, 10:30 a. m.

(Whereupon, counsel read from Exhibit No. 208 to the jury.)

No. 28, a letter on the letterhead of the International Fishermen & Allied Workers of America, San Pedro, Berth 73, May 31, 1946, addressed to Mr. Ray Morkowski and signed by Gilbert Zafran.

(Whereupon, counsel read from Exhibit No. 28 to the jury.) [2125]

211. Strike committee meeting minutes, San Pedro, June 1, 1946, Local 36.

(Whereupon, counsel read from Exhibit No. 211 to the jury.)

Mr. Dixon: 404. Minutes Santa Monica unit. Executive Board meeting, June 1st, 1946.

(Whereupon, counsel read from Exhibit No. 404 to the jury.)

Mr. Dixon: 212, Strike committee meeting, San Pedro, June 2nd, 1946, Local 36.

(Whereupon, counsel read from Exhibit No. 212 to the jury.)

Mr. Dixon: 405. Minutes, Southern California Fishermen, Santa Monica unit, Local 36.

(Whereupon, counsel read from Exhibit No. 405 to the jury.)

Mr. Dixon: 304, partial. Minutes of regular meeting of fishermen union Local 36. June 3, 1946.

* * *

213. San Pedro strike committee meeting, June 3, 1946. Among those present: T. R. Smith, George Knowlton, Otis Sawyer, C. C. Kennison.

(Whereupon, counsel read from Exhibit No. 213 to the jury.)

Mr. Dixon: 406. Minutes Local 36, Santa Monica Unit, dated June 3rd. Strike committee.

(Whereupon, counsel read from Exhibit No. 406 to the jury.)

Mr. Dixon: 503. Telegram addressed to Ray Morowski, signed by Charles McLauchlan, Business Agent, Newport. Dated June 3rd.

(Whereupon, counsel read from Exhibit No. 503 to the jury.)

Mr. Dixon: 214. Strike committee meeting, San Pedro, June 4th, Local 36. Members present among others, Otto Sawyer, F. R. Smith, George Knowlton, C. C. Kennison.

(Whereupon, counsel read from Exhibit No. 214 to the jury.)

Mr. Dixon: 328. Newport minutes, dated June 4, 1946. Strike committee meeting.

(Whereupon, counsel read from Exhibit No. 328 to the jury.) [2129]

Mr. Dixon: Exhibit 215. Strike committee minutes, San Pedro, dated June 5.

(Whereupon, counsel read from Exhibit No. 215 to the jury.)

Mr. Dixon: 216. Minutes San Pedro strike committee meeting, dated June 6th. Among those present: George Knowlton, C. C. Kennison, Otis W. Sawyer, and others.

(Whereupon, counsel read from Exhibit No. 216 to the jury.) [2130]

Mr. Dixon: 310, partial. Minutes of strike committee meeting, Newport, June 6th.

* * *

San Pedro minutes, Exhibit 217, strike committee minutes, June 7. Present among others: George Knowlton, Otis Sawyer, C. Kennison.

(Whereupon, counsel read from Exhibit No. 217 to the jury.)

Mr. Dixon: Exhibit 311. Newport minutes, June 7th.

(Whereupon, counsel read from Exhibit No. 311 to the jury.)

Mr. Dixon: Exhibit 406-A. Minutes special meeting, Santa Monica unit, dated June 7th.

(Whereupon, counsel read from Exhibit No. 406-A to the jury.)

* * *

Mr. Dixon: May it please the court. Exhibit 218. Copy of resolution cast by members of Santa Monica unit, Local No. 36, at a special meeting held at Santa Monica, June 7th. [2131]

(Whereupon, counsel read from Exhibit No. 218 to the jury.)

Mr. Dixon: 219. Strike committee meeting, San Pedro, June 8th. Among those present: George Knowlton, C. C. Kennison, Otis W. Sawyer, and others.

(Whereupon, counsel read from Exhibit No. 219 to the jury.)

Mr. Dixon: 312. Strike Committee minutes, Newport, June 8th.

(Whereupon, counsel read from Exhibit No. 312 to the jury.) [2132]

Mr. Dixon: No. 220, strike committee meeting, San Pedro, June 10, 1946. Among those present: George Knowlton, Otis W. Sawyer, C. C. Kennison, Jeff Kibre.

(Whereupon counsel read Exhibit No. 220 to the jury.)

No. 313, partial.

* * *

No. 224, partial:

"Strike committee meeting, San Pedro, June 12, 1946." [2133]

* * *

No. 225, strike committee meeting, San Pedro, June 13, 1946. Among those present: C. C. Kennison and others.

(Whereupon, counsel read Exhibit 225 to the jury.)

No. 226, partial. Strike committee meeting, San Pedro, June 14, 1946. [2134]

* * *

No. 227, strike committee meeting minutes, San Pedro, June 15, 1946. Among those present: C. Kennison, Gilbert Zafran, Otis Sawyer, George Knowlton and others. [2135]

* * *

No. 228, partial. Strike committee membership minutes, San Pedro, June 15, 1946, Fishermen's Co-op Building. [2136]

* * *

No. 317, minutes of June 20, 1946. Minutes of the Newport Unit, signed by C. Lloyd Munson, secretary. [2141]

* * *

Mr. Rubin: Document No. 307, which is a partial:

“General meeting, Newport Fishermen’s Union Local 36, June 24, 1946. [2142]

* * *

No. 319, which is a partial. It refers to the strike committee meeting of June 26, 1946. [2143]

* * *

Next is 233, partial. Strike committee meeting of San Pedro, dated June 28, 1946. Present, among others, were Otis W. Sawyer, Gilbert Zafran, George Knowlton, C. C. Kennison, Jeff Kibre and F. R. Smith. [2144]

* * *

Next is minutes of the Newport Beach unit, dated June 28, 1946, strike committee meeting. This is document No. 320, a partial: [2145]

* * *

Next is No. 321, which is also a partial, of the strike committee meeting of Newport, June 29th, 1946.

* * *

Next is document No. 322, which is a partial. Strike committee meeting of Newport, June 30, 1946. [2146]

* * *

Next is Government’s Exhibit No. 504, a partial,

and represents minutes of the C.I.O. Local 36, San Diego unit, and part of which reads as follows:

* * *

The next is a carbon copy under Government's Exhibit 209, carbon copy of a letter marked "36" at the top, "Berth 73, San Pedro, California; Gilbert Zafran, July 9, 1946," and addressed to "Dear Brother Hawser."

(Whereupon, counsel read Exhibit No. 209 to the jury.)

Government's Exhibit No. 210 is a carbon copy of the enclosure, signed by Gilbert Zafran, dated July 9, 1946, and addressed to "Santa Barbara dealers."

(Whereupon, counsel read Exhibit No. 210 to the jury.)

Government's Exhibit 236 is a duplicate of the notice that went in through the witness Ross and has been identified by Miss Evanisevich as having been dictated by Mr. Zafran. It will not be necessary to re-read that document.

Mr. Andersen: What is the number?

Mr. Rubin: No. 236.

We now call to the attention of the ladies and gentlemen [2147] of the jury Government's Exhibit 332, which is a memorandum, Memorandum "A" on the letterhead of the International Fishermen & Allied Workers of America, attached to which is a copy of the Southern California Market Fishermen's Master Agreement, the counterpart of which is in evidence as Government's Exhibit No.

3. This one is dated May 28, 1946, and the contract itself is signed by the Commercial Fishermen's Co-operative Association, Inc., by Bruce F. Martin. The memorandum attached thereto is signed by Mr. Martin on behalf of the Commercial Fishermen's Co-operative Association, Inc., and signed on behalf of the International Fishermen & Allied Workers of America by Charles McLauchlan. It is dated May 28, 1946.

Government's Exhibit 333 is the same memorandum "A," and attached to the same form of contract, signed by the Western Cannery Company by W. M. Longmoor, and signed International Fishermen & Allied Workers of America by Charles McLauchlan, Local 36, Treasurer, and also by Harold K. Reichner and Burt D. Lackyard.

Memorandum "A" reads as follows: in both the previous exhibit and this exhibit and the one to follow:

(Whereupon, counsel read from Exhibit No. 333 to the jury.)

Government's Exhibit 334 is the identical contract and Memorandum "A," the contract of which is signed Larry Fisher, [2148] Wholesale Fish, Newport Beach, California; also signed International Fishermen & Allied Workers of America by Charles McLauchlan, Harold K. Reichner and Burt D. Lackyard. The same parties have also executed the price list and memorandum "A," all of which is dated May 28, 1946.

That concludes the documentary evidence, if your Honor please.

There is one additional matter. Your Honor will recall this morning the membership application cards of the union and the ledgers were admitted into evidence for the purpose of showing the nature of the organization. We have extracted from these cards the cards of some of the defendants and we desire, as to those cards, that they be admitted generally, showing what they purport to show on their face.

The Court: Let me see them. Have counsel seen them?

Mr. Margolis: No.

(Exhibiting documents to counsel.) [2149]

The Court: Do you wish to offer these as a whole?

Mr. Rubin: If your Honor please, I think if they are admitted they might be replaced in the exhibits from which they came and bear that number. Simply as to those cards I desire to offer them generally.

The Court: I think these ought to either be left in the files or photostats substituted, and each one ought to take a separate number.

Mr. Rubin: Very well, if your Honor please. Then we will offer them as Government's Exhibits next in order, respectively, commencing with Government's Exhibit No. 48.

The Court: W. B. McComas will be 48; Otis W. Sawyer will be 49; C. Kennison, 50; F. R. Smith, 51; H. A. McKittrick, 52; Arthur Dempsey Hill, Jr., 53; Burt D. Lackyard, 54; Charles McLauchlan, 55; George Knowlton, 56.

(The documents referred to were received in evidence and marked Government's Exhibits Nos. 48, 49, 50, 51, 52, 53, 54, 55 and 56.)

The Court: Next witness?

Mr. Dixon: The Government rests. [2150]

* * *

Los Angeles, California; April 14, 1947; 10:30 o'clock a.m.

* * *

The Court: United States v. Local 36. Usual stipulation?

Mr. Dixon: Yes, your Honor.

Mr. Margolis: Yes, your Honor.

Mr. Andersen: I have an opening statement, your Honor.

The Court: Do you desire to make an opening statement?

Mr. Andersen: Yes, your Honor.

The Court: I should state, I think to the jury, that this is the appropriate time when the defendants will put on their defense. It will be opened by a statement by defense counsel to you ladies and gentlemen of the jury of what they propose to prove. The case proceeds against all defendants originally charged except the defendant Sherman.

(Here followed the opening statement by Mr. Andersen which was reported but not transcribed.)

The Court: Very well. Call your witness.

Mr. Margolis: Our first witness, your Honor, will be Mr. Kibre.

JEFF KIBRE

called as a witness by and in behalf of the defendants, having been first duly sworn, was examined and testified as follows: [2325]

* * *

Direct Examination

By Mr. Margolis:

Q. Mr. Kibre, what do you do for a living?

A. I am the secretary-treasurer of the International Fishermen & Allied Workers.

Q. Is that the International organization with which Local 36, one of the defendants in this case, is affiliated? A. It is.

Q. How long have you held that position?

A. I have been secretary-treasurer since February of 1945.

Q. Were you connected with the same organization prior to February 1945?

A. Yes, since the fall of 1940.

Q. And in what capacity or capacities?

A. In the capacity of International representative in charge of the California locals.

Q. Could you tell us briefly what your duties were with the International as an International representative during the period from 1940 until you became secretary-treasurer?

A. The important duties that I had, first of all, was [2326] to attempt to achieve coordinated action on the part of the various locals that we have in the state of California. In that connection, I might point out that we have some seven or eight active

(Testimony of Jeff Kibre.)

locals in the state of California located in all of the fishing ports, and it was one of my functions to see that the locals got together from time to time and discussed mutual problems and worked out a coordinated program to improve the interests of all of our members in the state of California. That was one of my duties.

A second duty, or I might say a series of obligation developed in the course of the war particularly. Those were duties connected with meeting the problems brought about by the war, as the war affected the fishing industry; and in that connection it was my duty to meet with the various Government agencies that had jurisdiction over the fishing industry.

I might point out in this connection that during the period of the war the fishing industry was affected by some 10 or 15 Governmental agencies, including the armed forces, and we had a tremendous problem in that connection with respect to regulations, and it was my duty to meet regularly with the various Government agencies, the Army, the Navy, the Coast Guard, the War Production Board, the Office of the Coordinator of Fisheries, the OPA and various other agencies, and attempt to work out the solution of problems that affected out people and that affected the industry as a [2327] whole.

Q. Excuse me. Did that include also the State Fish and Game Commission?

A. Yes, it did.

Q. Did you also have the problem of assisting the various locals in negotiations?

(Testimony of Jeff Kibre.)

A. Yes, that, of course, was one of my important duties, to assist all of our locals in connection with their negotiations with fish dealers and with fish buyers, particularly canners in these various ports. That was at all times a very important duty.

Q. Did you have any connection with research work in the fishing industry?

A. Yes, a great deal. I might say that shortly after I went to work for the International as representative I did take on added duties in addition to my work as a representative in charge of the California locals. That added responsibility consisted primarily of doing a considerable amount of research work for the International office, particularly in the course of the war, and in that connection it was my duty to read and study various publications dealing with the fishing industry, publications put out by the various fishery agencies in California, Oregon and Washington, and also the numerous number of pamphlets put out by the Fish and Wild Life Service. I had to do a great deal of work in that connection, research work. [2328]

Q. Mr. Kibre, you have mentioned that during the war you worked with numerous government agencies as a representative of the International Union. I wonder if you could give us a brief statement of the nature of the problems before those agencies on which you worked.

Mr. Dixon: If the court please, I object to that question as being wholly immaterial.

(Testimony of Jeff Kibre.)

Mr. Margolis: If your Honor please, I might state two purposes for this: First of all, we are going to qualify Mr. Kibre as an expert in this field, and the type of work that he has done is necessary for that qualification, that is, the basis for his qualification. And, second, as your Honor has previously stated, the question of what kind of an organization the Fishermen's Union is is a question of fact to be determined by the jury. If it is a question of fact, then I submit that the only way that the jury can determine what the organization is is by what it has done. That is what determines what the organization is, and we propose to show the kind of activities in which the organization has engaged, so that the jury can determine what kind of an organization this is. I think it is the only way we can show, in addition, of course, to introducing the Constitution, and so forth, which will also bear upon the same question.

The Court: From counsel's opening statement he indicated that you expected to prove to the jury that this was either a [2329] labor organization or that it was a co-operative Fishermen's organization. I don't know, as I have indicated before, what particular difference that would make, except as to whether or not it is a Fishermen's co-operative. Your question—I don't see how that is immediately or particularly addressed to that problem.

Mr. Margolis: If your Honor please——

The Court: And how it would illuminate the jury, no matter what the witness' answer might be.

(Testimony of Jeff Kibre.)

The field has limit, and perhaps I can better tell by the response of this witness to this question and perhaps some other preliminary questions. In other words, I will reserve my ruling on the whole line of questioning at this time until I see what develops.

Mr. Margolis: If your Honor please, I want to also direct your Honor's attention to the fact that I want to get into evidence this witness' experience in connection with dealing with problems of this kind, in order to qualify him as an expert on these matters.

The Court: As an expert with relation to what phase?

Mr. Margolis: With relation to the economic problems, with relation to general fishing problems in the fishing industry, your Honor, as a member of the Fish and Game Commission might be an expert on that subject, or as a person working for some other government agency. I propose to show [2330] he worked with these government agencies on these various problems in such a manner as to qualify him as an expert, just as if he had been a member of one of those groups.

The Court: You proceed with a few of your questions and answers and I will try and determine from them the tack which will be taken by the testimony, and from that the latitude which will be allowed.

Will you read the question?

(Testimony of Jeff Kibre.)

(The question referred to was read by the reporter as follows:

“Q. Mr. Kibre, you have mentioned that during the war you worked with numerous government agencies as a representative of the International Union. I wonder if you could give us a brief statement of the nature of the problems before those agencies on which you worked.”)

The Witness: Yes. The foremost problem was precisely the problem of co-ordinating the various agencies affecting the fishing industry. In that connection the Department of the Interior set up what was called the Office of Co-ordinator of Fisheries, and throughout the war I served as an advisor to the Department of the Interior in connection with the work performed by the Office of Co-ordinator of Fisheries. It was my function as an advisor and as a participant in the work performed by the Co-ordinator of Fisheries primarily to organize production programs along the West Coast, and particularly in [2331] the State of California, to help bring about a solution of the various problems affecting production, let us say, in the sardine industry, to undertake a program to improve the amount of production, to improve the production by the other fishing fleets in Southern California. The main work consisted of a production agency.

Q. Had the war created a number of problems in regard to production?

(Testimony of Jeff Kibre.)

A. Yes. There was the problem—one of the basic problems we faced was that a large number of the vessels were taken over by the Navy, and it was therefore necessary to get maximum production with a 50 per cent normal fleet. In other words, to make an ordinary fishing boat be twice as productive as it had been prior to the war. That was one of the jobs that we faced. Another job that we faced was the problem of Naval and Coast Guard regulations, which seriously hampered the movement of the fishing vessels. For example, there were large areas that were restricted to the fishing fleet for reasons of security, and it was our problem to work with the naval forces, the district commanders, and even the Secretary of Navy in Washington to attempt to reduce the extent of these restricted areas, and also to work out convoy systems whereby our fleet could fish in those areas. [2332]

Q. In order to help solve those problems, did you have to become familiar with such problems as where fish is to be found and the problems of catching and bringing in that fish?

A. Yes, very definitely. I had to become familiar with the fishing areas, the type of fish caught, the type of gear, where the fish is caught, how it is brought in, and so on.

Q. Did you also have to become familiar with all of the fish and game regulations and laws relating to these problems?

A. Very definitely. In fact, I met regularly with the Fish and Game Commission for a period of some three or four years.

(Testimony of Jeff Kibre.)

Q. Did you serve on these various committees, and particularly as an adviser to the Department of the Interior, simply in your individual capacity or as a representative of the International Union?

A. I served as a representative of the International Union.

Q. You became secretary-treasurer in 1943, did you say?

A. 1945; February of 1945.

Q. Now were your duties at that time as an officer of the International changed, and if so in what way?

A. Yes. They were changed in the sense that it was now my main obligation to perform the administrative work for the International Union, such as keeping the records, protecting [2333] the finances and setting up books and keeping the books, and the normal administrative work that is necessary for the operation of a large organization extending over a large area.

In addition to that administrative work, I also had to do a considerable amount of field work, such as I had done previously, that is, getting out in the field and assisting the local organizations in the solution of their problems.

Q. Did you continue doing most of the work that you had done as an International representative after you became secretary-treasurer?

A. Yes.

Q. Now in both your offices as International representative and as secretary-treasurer of this union,

(Testimony of Jeff Kibre.)

was it required for you to, and did you travel to, the various ports on the Pacific Coast? A. Yes.

Q. And became acquainted with the problems in the different ports?

A. Yes. I practically lived in a Pullman car or in a plane for the last two years particularly. It has been my duty to travel regularly and extensively up and down the entire West Coast, to visit all of the fishing ports, and in addition to that in the past year and a half to travel into the Gulf to cover the entire Gulf area—that is, the Gulf [2334] of Mexico—and along the East Coast as well.

Q. In the course of your duties and your studies in the fishing industry, particularly here on the West Coast, have you become familiar with the history of the organization of fishermen on the Pacific Coast?

A. Yes, very definitely.

Q. What is the first record that exists of the organization of fishermen on the Pacific Coast.

Mr. Dixon: If the Court please, I now rise to object to this line of testimony which, as far as the defendants who are on trial is concerned, we regard as wholly immaterial.

The Court: I think it is, counsel. Objection sustained.

Mr. Margolis: Your Honor, I would like—this is so basic, your Honor, and I think I can point out to your Honor authorities which support our position—I would like the opportunity to argue this matter.

(Testimony of Jeff Kibre.)

I think the whole question of how we present our case is involved here, and I would respectfully request such an opportunity.

* * *

(Whereupon, at 11:45 o'clock a.m., the jury retired from the court room.) [2335]

** * *

The Court: Come back at 1:20. I followed Mr. Andersen's opening statement and it seemed to me that there was considerable that he mentioned in his opening statement that might have very doubtful materiality to the case and other grounds of inadmissibility, such as the history of the union. In other word, what I am thinking about is this, this is not like a murder case where you come in and justify killing somebody, and the only confession and avoidance that you can have in this kind of a case, it would seem to me, would be limited to the fact to be determined by the jury whether or not you did or did not conspire, whether or not you are or are not under the Fishermen's Marketing Act, whether or not if you did or did not conspire that the purpose and object of the conspiracy was to restrain the flow of fresh fish into this community so as to affect and burden the commerce in fresh fish. In other words, to destroy the competitive production of fish to the consumer.

Mr. Dixon: Pardon me, your Honor. I was just going to suggest, your Honor, with reference to that latter point—and I might say that we perhaps can save considerable amount [2336] of time by at this

particular phase of the defense coming to grips with many of the questions which may be presented by the type of testimony which Mr. Andersen indicated he would probably endeavor to bring into the defense of this case.

The Court: Yes, I think that if we are going to have an argument on the question we might just as well discuss generally the admissibility of these various things, and this is a good key to it, this unanswered question.

Mr. Margolis: So that your Honor may be thinking, and so that counsel may know what we have in mind, in addition to the matters which your Honor has mentioned we intend of course to rely upon the rule of reason. I think your Honor will find that the cases are very broad as to the type of evidence that will be considered, the history, and so forth, the economic conditions of the industry, and whether or not the rule of reason applies here is, I might say, a question of fact to be determined by the jury.

In any event, I am just pointing that out.

The Court: Of course the rule of reason is difficult to define, as to just what is meant by the rule of reason.

Mr. Margolis: That is right, your Honor.

The Court: It took a lot of pages trying to define it originally and they have been talking about it ever since and saying it was a bad rule.

Mr. Margolis: Precisely because it is difficult to [2337] define, your Honor, it is difficult to define the outer limits of testimony which is admissi-

ble, particularly with regard to the rule of reason, and we certainly intend to go into that.

The Court: Very well. We will recess until 1:30. [2338]

* * *

The Court: I think I will have to sustain the objection. I read very carefully the cases which you cited on which you principally depended, the Board of Trade case and the Appalachian case, and the case upon which the government relies, the Socony Vacuum case, and the Socony Vacuum case itself distinguishes the two previous cases. But I did not depend upon the distinction pointed out in the Socony Vacuum case.

As to the Chicago Board of Trade v. United States, the Socony Vacuum case points out that no attempt was made to show that the purpose or the effect of the rule—that is, the rule that they claim was monopolistic—was to raise or depress prices. The rule affected only a small proportion of the commerce in question, and among its effects was the creation of a public market, and so forth. Since it was not aimed [2343] at price manipulation, or the control of market prices, and since it had no appreciable effect on market prices the rule survived as a reasonable restraint of trade.

This is a price case, there isn't any denying that, and I think the defendants concede it.

Mr. Margolis: We would like the opportunity to prove in this case precisely what the court found to be the fact in that case, and we think we should have the opportunity to prove it as a defense, and

that at this point, following the government's presentation of the case, it simply cannot be said that this contract which was attempted to be obtained would have a substantial effect upon prices.

The Court: That is only one of the things. It was not aimed at price manipulation or the control of market prices.

Mr. Margolis: We want to prove the same here, your Honor; it is not aimed at market manipulation or the control of market prices.

We want the opportunity to prove that, that it was aimed at something entirely different.

The Court: What?

Mr. Margolis: That it was aimed at getting a decent return for the fishermen——

The Court: By the control of prices. [2343]

Mr. Margolis: If I may finish. ——but not to determine market prices.

The point is that the market prices referred to in the Socony Vacuum case are the prices to the consumer. That is how they distinguish the other cases. There is no attempt here to regulate the prices to the consumer.

The Court: In the Socony Vacuum case they went to the source of supply and bought the distressed gasoline from what is referred to in the oil business as the pots.

Mr. Margolis: But the combination went all the way up to the consumer and the ultimate effect was on the price to the consumer. We want the opportunity to show here there is no ultimate effect on the price to the consumer. As a matter of fact,

they distinguished in the Socony Vacuum case, your Honor—the court said in the Appalachian case there was no showing there was any effect on the price to the consumer. In this case we want the opportunity to show the same thing. I don't think that there can be any assumption here that there is an effect upon the price to the consumer. As a matter of fact, there has been no showing of that kind.

The Court: The court in the Socony Vacuum case also distinguished the Appalachian case, on page 215, volume 310—214 and 215. “And it observed”—that is to say, the court in the Appalachian case—“that the plan did not either contemplate or involve ‘the fixing of market prices’; that [2344] defendants would not be able to fix the price of coal in the consuming markets; that their coal would continue to be subject to ‘active competition’.”

Mr. Margolis: Your honor, the words that are important there are the words “in the consuming market.” Now I do not think——

The Court: Well, the consuming market, I am afraid in connection with any commodity that goes into trade, the consuming market begins where it first enters the channel of commerce. There is no distinction between the consuming market when you buy it and eat it; the consuming market is the flow of trade.

Mr. Margolis: Then I don't know why they use the words “consuming market.” They would have said “in the market” and the word “consuming” just doesn't mean anything, your Honor. The word

"consuming" was just thrown in there. They might have said "in all markets" but they said "consuming market." I don't think that the dealers consume fish. They trade in fish; they don't consume it. I think that that is putting an interpretation upon the word "consuming" which either makes it meaningless or which gives it exactly the opposite meaning which the word "consume" has. The dealer does not consume fish, except a small amount perhaps.

The Court: I am sorry but I cannot agree with you. I thought very seriously about the matter, in fact, I thought so seriously about it that I got up at 12:00 o'clock and read books until 3:00 o'clock this morning.

Now in the Socony-Vacuum case they also point out that in the Trenton Pottery cases, which appears to be the first time where the Court sustained a conviction under the Sherman Act and stated that the reasonableness of the prices or the good intentions of the combining units should not be taken into consideration. The Court in the Socony-Vacuum case repeats that, not only quotes it with approval but it repeats it at page 222:

"It has no more allowed genuine or fancied competitive abuses as a legal justification for such schemes than it has the good intentions of the members of the combination."

On page 210 of the Socony-Vacuum case it says:

"The court stated (that is, the trial court) that where the members of a combination had

the power to raise prices and acted together for that purpose, the combination was illegal; and that it was immaterial how reasonable or unreasonable those prices were or to what extent they had been affected by the combination."

And it goes on and repeatedly says language to the same effect.

And in this case specifically the point was raised in the Supreme Court that certain evidence which was offered should have been admitted as bearing on the purpose and end sought to be attained, the evil believed to exist and the [2347] nature of it, and the Court sustained the lower court in excluding that evidence. And in the argument to the Supreme Court the appellants specifically relied upon *Board of Trade v. United States* and the quotation which you gave to me, Mr. Margolis. They quote that in their brief to the court and it is quoted here in this volume.

Mr. Margolis: With relation to an entirely different set of facts than we have here, your Honor. That is the point.

The Court: As you stated yesterday, every set of facts is different, and the only value of precedent is the analogy. If we could take that literally and rely upon it that every set of facts was different, the law would have to be new for every case and we could not have any rules to guide us. All we can do is take the analogies and, as I see it, the analogies present in this case, the accusation is that they combined for the purpose of fixing prices and to affect the flow of fresh fish in other than a competitive manner.

Here they combined, in the Socony-Vacuum case, to restrain the quantity, that is, they combined to maintain the price, but one of the things they did was to restrain the quantity of gasoline which would come on the market which would destroy or affect the price.

I think it is almost needless for me to continue to quote. I have marked the book up here and it is marked up [2348] on every page from 210 to 224.

On page 228, in connection with the respondents' offer of proof which they made in the Socony-Vacuum case, the Court says:

"The offers of proof covering the background and operation of the National Industrial Recovery Act and the Petroleum Code, the condition of the oil industry, the alleged encouragement, cooperation and acquiescence of the Federal Petroleum Administration in the buying programs and the like were properly excluded, in so far as they bore on the nature of the restraint and the purpose or end sought to be attained. For as we have seen the reasonableness of the restraint was not properly an issue in the case."

They go on further in that connection:

"To the extent that they were designed to show that respondents by their buying programs had not raised the spot market prices to an artificial and non-competitive level, these offers of proof were properly denied as immaterial. For, as

we have said, the reasonableness of the price and the fact that respondents' activities merely removed from the market the depressive effect of distress gasoline were not relevant to the issues." [2349]

That is only among other things that are not relevant.

"And to the extent that these offers of proof were aimed at establishing and evaluating other contributory causes for the price rise and market stability during the indictment period, they were not improperly denied."

However, on page 230 of the Socony-Vacuum case I think the Court does set a pattern for the admissibility of a certain type of evidence. That was the type of evidence and the plan which I tried to follow in connection with the offers of proof made in the government's case and the admission of evidence by the government and the exclusion of other evidence.

The Court goes along about prolonging the inquiry, that Mr. Justice Holmes' one objection to the introduction of collateral issues is a "purely practical one, a concession to the shortness of life." And then it goes on:

"Similar reasons sustain the action of the trial court in limiting the inquiry into general economic conditions antedating and during the indictment period."

So I think that general conditions concerning the fish industry antedating the indictment period and during that time, that is, a reasonable time prior to the indictment period, are admissible. But I do not think that evidence which goes to the reasonableness or unreasonableness of the defendants' [2350] conduct, reasonableness or unreasonableness of the price, is to be admitted.

There is one other quotation that I had here a while ago. In the Socony-Vacuum case at page 211 the Supreme Court, in speaking of the reversal of the case by the Circuit Court of Appeals, said:

"The Circuit Court of Appeals held this charge to be reversible error, since it was based on the theory that such a combination was illegal per se. In its view respondents' activities were not unlawful unless they constituted an unreasonable restraint of trade. Hence, since that issue had not been submitted to the jury and since evidence bearing on it had been excluded, that court reversed and remanded for a new trial so that the character of those activities and their effect on competition could be determined."

And the Supreme Court reversed the Circuit Court, thus holding that that was not a proper view of the law.

Moreover, there are indications in here, as indicated there, that the mere making of a price fixing agreement is per se a violation of the Sherman Law, which would seem to indicate that the government

need go no further to prove a prima facie case, and whether it was reasonable or not is immaterial, and evidence going to that effect is inadmissible. [2351]

However, I have not followed that idea in my rulings on the evidence in the case in chief.

On page 217, in speaking of the Maple Flooring case and the Cement case, the Court said:

"It was noted in those cases that there was not present any agreement for price-fixing. And they were decided, as indicated in the Trenton Potteries case, on the express assumption that any agreement for price-fixing would have been illegal per se."

On page 219:

"Proof that there was a conspiracy, that its purpose was to raise prices, and that it caused or contributed to a price rise is proof of the actual consummation or execution of a conspiracy under Section 1 of the Sherman Act."

Then again on page 221, the portion which Mr. Rubin read last night, all goes to the same idea.

Mr. Margolis: Before your Honor finally rules, I want to state our offer on one more point. That one additional point is this, that under the Fishermen's Marketing Act, collective marketing of fish is permitted. I think that it is true that in different types of industries there are different forms of marketing and that the evidence as to traditional forms of marketing fish is competent, historical evidence with regard to the methods of marketing fish is

competent, for the purpose [2352] of showing what kind of marketing is permissible under the Fishermen's Marketing Act.

The Court: By "historical methods of marketing fish," what do you mean?

Mr. Margolis: I mean the types of agreement which fishermen have historically entered into with regard to the sale of their fish. That is what I mean by marketing. Agreements for sale. And I think that the types of agreements which have been in effect for many, many years and which were in effect at the time that this legislation was enacted is admissible for the purpose of showing the type of marketing which is covered by the Fishermen's Marketing Act; if there is a traditional form of marketing in this industry which may be different from marketing in other industries, then I think that it is admissible to show what the traditional form of marketing is.

The Court: I would be inclined to agree with you, but I do not think we ought to go into an encyclopedia discourse here as to the history of catching and marketing fish. I think something that goes to the issues here is all right.

You handed me up a book here, Mr. Dixon.

Mr. Dixon: That is just a government publication on the Marketing Act.

The Court: This is the same one that the defendants have? [2353]

Mr. Dixon: Yes.

The Court: Fisheries Circular No. 22?

Mr. Dixon: That is right.

Mr. Rubin: There is a definition in there on the righthand page as to what a fishery cooperative association is.

Mr. Dixon: Of course, our contention here is, your Honor, that the defendants have shown no evidence whatsoever, and I do not believe they can, that they even come within the Fishermen's Marketing Act.

The Court: If they can, I think they are entitled to present it.

Mr. Dixon: We agree.

The Court: In other words, I do not think I have the right or the power to compel the defendants at this time to decide in their defense whether or not they are going to claim a labor union or a cooperative. In other words, they claim they are not guilty for any and all reasons which might appeal to the jury as being reasonable.

Mr. Margolis: To get back to that point, your Honor, I think we do not intend—let me say in our evidence—by going back to the first incident that we have knowledge of where this type of marketing was carried on, to spend hours on the thing. As a matter of fact, 10 or 15 minutes would cover this whole period of history. We don't intend to go into an encyclopedic discussion of it, but we did intend, [2354] your Honor, to show that there has been established in the United States and on the Pacific Coast a traditional method of marketing fish by fishermen through collective bargaining agreement of the precise kind which the defendants in this case sought to obtain. [2355]

The Court: Now, I don't know whether that would be admissible or not. I don't think that goes to the general economic condition of the industry.

Mr. Margolis: I am not withdrawing our other position, your Honor, but I am now basing our offer on a different ground—on an additional ground, let me say.

The Court: What ground is that?

Mr. Margolis: That ground is in determining what kind of market the Fishermen's Marketing Act has reference to we have to take into consideration the traditional methods of marketing in this industry. The different methods of marketing in one industry may be considered as being appropriate, because they are the traditional methods of marketing in the industry, and when the Fishermen's Marketing Act was passed the purpose was to permit fishermen to act in accordance with the traditional methods.

Mr. Rubin: I know of no such authority, if your Honor please. It seems to me this issue is solely this: what did these defendants do in this particular situation, and how do they function and how do they operate?

There may be a perfectly legitimate Fishermen's cooperative somewhere. No doubt there is. The fact that they function and function successfully is certainly not material to what these defendants do.

The Court: I don't see how that would be, counsel. It [2356] seems to me the actual effect of it would be to say, "Well, all we did was to do what

somebody else did, and they are not being prosecuted, and we are," which is not a defense.

Mr. Margolis: I don't think it is conclusive. My only contention is that in determining what this legislation was intended to cover, the type of marketing it was intended to cover, one thing that can be taken into consideration, one factor—I don't think it is the determining factor—but one factor that can be taken into consideration is the type of marketing that is traditional in this industry. That is one factor to determine what is meant by fishermen collectively marketing.

The Court: What specifically do you propose to prove in that connection?

Mr. Margolis: We propose to prove—I am not making this as an offer of proof, because that would be in more detail, but we propose to prove that at least since—I have forgotten the year, 1886, or whatever the year was, the traditional method of fishermen marketing their catch has been through collective bargaining agreements of the precise type which is involved in this case.

Mr. Rubin: Then you would have to go into every facet of every industry in which that particular contract was made. As counsel knows, the canning industry has an entirely different situation than the fresh fish industry; the big boats [2357] have an entirely different situation than the small boats.

Mr. Margolis: You mean with regard to fishing?

Mr. Rubin: With respect to with whom the contracts are made.

Mr. Margolis: We deny that. The government will have an opportunity to show that, but we deny that that is so, and I submit that counsel standing up and saying that is what we will show isn't proof at all. What we offer to prove, and I think this is the basis upon which the admissibility or non-admissibility must be determined—not upon what counsel says he is going to prove—what we offer to prove is this: the traditional form of marketing in the entire fishing industry, canning and every other aspect of it.

If our proof is not correct, if those are not the facts, then of course the government has the opportunity to disprove the fact, but in determining our offer of proof, we can't do it upon the basis of what counsel says are the facts; it has to be determined as to whether our offer is competent, if it is true.

The Court: I don't think so. I think what you did here—if you offered to prove the traditional method of marketing, then you have to, as Mr. Kibre up to this point has testified that the union covers the whole United States, and you have locals wherever there is a port of any consequence where fish is brought in, you would have to bring in the contracts, and every one of them. I don't think that is a defense. I don't [2358] think it is properly admissible as a defense.

Mr. Margolis: It isn't a question of what is a defense, your Honor; it is a question of what is meant by collective marketing. And in order to determine the meaning of that term in the law—

The Court: No, I don't think so. I think you have to determine here whether it is collective bargaining by what the defendants did and what they wanted to do, what their intention was, which must be determined from the facts and not merely their declarations, and then the jury can decide under appropriate instructions whether they are or are not within and under the ambit of the Fishermen's Marketing Act.

In any event, what do you want to do about making an offer of proof? From what I have said now it ought to be an indication that there are a great many things in Mr. Andersen's opening statement that I would have to sustain an objection to.

Mr. Kenny: I think there are a great many grounds as to the admissibility of this that Mr. Margolis did not touch upon.

Assuming your Honor is correct that the government makes out a prima facie case and they show the agreement was one to reduce competition, and by reducing competition fix prices, at least then it is a matter of defense to show, (1) either—this refers to what Mr. Margolis has been touching upon—marketing methods, and (2) this is a bona fide union. [2359]

I want to read one paragraph. Mr. William Leiserson spoke out at U.C.L.A. at that conference, and there was one paragraph in his speech that was very impressive to me, and I had it copied this morning. This goes to the matter of defense. It is assuming

the government can make a prima facie case, then there are these certain exceptions. This is what Mr. Leiserson says:

“But not only labor unions, farmers’ organizations, too, are exempted from antitrust laws. Unquestionably unions are combinations to restrict competition among workers, to raise and standardize wages and working conditions through whole industries; and farmers organize to standardize products and raise prices. In fact the Government lends money to combinations of farmers to help them withhold their products until they can get the prices they want. These Government policies with respect to labor and agriculture were established by law to deal with economic and social evils brought on by competition among farmers and workers, just as the antitrust laws were directed against the evils of business monopolies. To say they are special licenses to violate the law and to compel wage earners (or farmers) to compete and underbid each other is to ignore history and the progress that has been made since the combination laws [2360] of Adam Smith’s days.”

What we are attempting here is to show a history not only of the mode of marketing, but of the unionization of this particular industry, and certainly if the government has a prima facie case showing a reduction agreement to reduce competition and price-fixing resulting therefrom, then if the burden does shift to the defense the defense should not be put in a strait-jacket and prevented from showing how come they got to be a union, how

come they got to market in this way, and whether or not they are not within these exemptions that the law has given through the years.

The Court: I think they would be except for the declarations in the various cases that the intentions of the defendants doesn't make any difference. All I can do is follow the law.

Mr. Kenny: This isn't going to intention. This is to tell the jury how come we got that way.

The Court: That is your intention. You did this because, because, because.

Mr. Kenny: If we show we are a labor union, historically rising as a labor union, or that we are marketing in the way contemplated by the Act, then the jury should know it.

This is a quotation from the Board of Trade case:

"This is not because a good intention will save an otherwise objectionable regulation, or the reverse, [2361] but because the knowledge of intent may help the court to interpret facts."

It seems to me Mr. Leiserson states the thing more briefly—

The Court: The Supreme Court says of the Board of Trade case that doesn't apply in a price-fixing case. That is the way I read the *Socony Vacuum* case. I may be wrong in it, but that is my conclusion on it after giving it some considerable study, and I have already ruled that a labor union by virtue of its being a labor union is not per se exempt. That is to say, that a labor union can be a labor union and still violate the antitrust laws, can conspire to violate the antitrust laws.

Mr. Kenny: Only vertically. When it leaves its essential position as a horizontal association of workers.

The Court: That becomes a question of fact.

Mr. Kenny: That is what we are trying to show to the jury.

The Court: Whether or not that is a conspiracy.

I wouldn't want to limit the law to that statement.

Mr. Rubin: And where there is a labor dispute, if your Honor please, they may have certain privileges.

Mr. Kenny: That is one of the things we intend to show here, that this is a labor dispute.

The Court: The Supreme Court has said the same thing [2362] isn't in the Hinton cases.

The only difficulty is if these cases weren't there you might be able to persuade me, but I have got these cases here and I have to follow the law as it is declared there, and as I see it.

Mr. Kenny: At least we should be given the opportunity to show that this is a labor dispute. Just because the Supreme Court in another case might have said that a dispute in that case was not a labor dispute, we have the right to make a record here to show that it was a labor dispute within the contemplation of the Act.

The Court: I don't think so.

Mr. Dixon: May I interrupt and ask him just what kind of evidence, and that gets back to the question I asked Mr. Andersen in his opening statement, he expects to introduce under that theory.

We have no objection to that, we believe it would be competent if they could introduce evidence to show that there was a labor dispute here; but the kind of evidence they are talking about would not be introduced for that purpose or be relevant to determine or help this jury determine whether there was a labor dispute here. The test, as we see it, as to that type of evidence is whether or not the employer-employee relationship exists between the parties, which is the foundation of the whole labor union organization. [2363]

Now, that type of evidence would be competent, in our opinion. But to go beyond that and to go out into broad fields of what the fishing industry does and doesn't do isn't going to help this jury determine that question. And the same would be true with regard to the type of evidence that they wanted to submit to show that they were a co-operative, or operating under the Fishermen's Marketing Act.

The Court: I think all the evidence that goes back to the history of these agreements, if there are agreements made by other labor unions, or other fishermen's organizations up and down the coast, or elsewhere, I don't think that is material here. On the matter as to whether or not it is a labor dispute, I think counsel's statement is correct.

In any event, the objection will be sustained, and we will call the jury down.

Mr. Andersen: Subject to the exceptions you mentioned?

Mr. Margolis: If your Honor please, at this point shall we make an offer of proof to some of the matters we want to prove?

The Court: I think probably that it might be well at this time. On the other hand, I don't think you have got far enough into the defense for me to be able to rule on your various offers of proof.

Mr. Margolis: We don't know where to go, your Honor. If we make an offer of proof, perhaps at some point your Honor [2364] can say, "Well, at that point I will permit you to prove it." Otherwise I am just going to go ahead in the only way I can see to do, go ahead and ask all the questions I was going to ask to see at what point the evidence is going to get in. I am perfectly willing to do that, but this is the only way I see of doing it so as to make my record for an offer of proof.

The Court: I think I indicated here that the general economic condition of the fishing industry antecedent to the time of the strike—of course, that was during the war, but I think the jury will probably take that into consideration—and perhaps before the war, is proper. But your questions indicated—and maybe I got thrown a little bit by the opening statement of Mr. Andersen, I keep going back in my mind that we are going to have to sit here and listen to the fishing industry back in 1884.

Mr. Margolis: We could have had Mr. Kibre off the stand by this time and it doesn't seem to me that the question of time is really the question here. If it would take a long time for us to put the evidence in, and if the evidence is material, the fact

that it would take a long time wouldn't make any difference. But the fact is it won't take us a long time. Of course, these discussions take a long time.

The Court: Whether it takes a long time or not, if you are entitled to put the evidence on you are entitled to put it [2365] on, because this is your day in court, and whatever length of time it takes, it will take.

I think I would prefer to probably go ahead a while in the matter of questions and answers and see what develops.

Call the jury down.

(The following proceedings were had in the presence of the jury.)

The Court: The stipulation with the usual exceptions?

Mr. Kenny: Yes, your Honor.

Mr. Rubin: So stipulated, your Honor.

The Court: Very well.

JEFF KIBRE

called as a witness by and on behalf of the defendants, having been previously sworn, resumed the stand and testified further as follows:

The Court: Read the pending question before the jury went out.

(The question referred to was read by the reporter as follows:

"Q. What is the first record that exists of the organization of fishermen on the Pacific Coast?")

(Testimony of Jeff Kibre.)

The Court: The objection is sustained.

Mr. Margolis: If your Honor please, I have some documents here that I would like to have marked for identification.

The Court: Very well. [2366]

Mr. Margolis: There are two documents on the letterhead of the Columbia River Fishermen's Protective Union, which are stapled together.

The Court: Do you want them separately marked?

Mr. Margolis: I think they can be marked as one and two of the same exhibit.

The Clerk: H is the next number.

The Court: H-1 and -2.

Mr. Margolis: There is also a receipt of the same union, and I ask that the documents be marked, the two letters H-1 and -2, and the receipt H-3, your Honor, for identification.

The Court: Very well. Has the government seen it?

Mr. Margolis: No. I am going to show it to them.

(The documents were passed to government counsel.)

The Clerk: I have to make a correction in that numbering, your Honor. The next in order will be I-1, -2 and -3.

(The documents referred to were marked Defendants' Exhibits I-1, I-2 and I-3, for identification.)

(Testimony of Jeff Kibre.)

Direct Examination

(Resumed)

By Mr. Margolis:

Q. Mr. Kibre, I show you three documents which have been marked as Defendants' Exhibits for identification I-1, -2 and -3, and ask you if you are familiar with those documents.

A. I am. [2367]

Q. What are those documents?

A. These are records furnished to us by our Columbia River Fishermen's Protective Union, an affiliate of our organization, furnished approximately a year ago to our office in Seattle.

Q. Were these documents taken from the files of that union?

A. Yes, they were taken from the files of the Columbia River Fishermen's Protective Union by the executive secretary, Henry Niemela. They were taken in response to a request from our affiliates for historical information dealing with collective bargaining on fish prices.

Q. And those are the documents that you received in response to that request, is that right?

A. They are, yes. [2368]

Q. Are you familiar with any of the names of persons mentioned on these documents?

A. Only to the extent that I know that they were at one time members of the Columbia River Fishermen's Protective Union, this particular name here. This is a receipt for that particular fisherman.

(Testimony of Jeff Kibre.)

Q. The name Abramson appearing on the receipt? A. That is right.

Q. Do you recognize this as the old letterhead of the Columbia River Fishermen's Protective Union?

A. That is right. In fact, they still use a letterhead somewhat similar to that.

Mr. Margolis: Your Honor please, at this time we offer in evidence as Defendants' Exhibits I-1, I-2 and I-3 the documents marked for identification with those numbers.

Mr. Dixon: Objection, your Honor, on the ground they are immaterial.

(The documents referred to were passed to the Court.)

The Court: Yes. I think these are immaterial. Objection sustained.

Mr. Margolis: I assume, your Honor, without stating so with regard to each item as to which any objection may be sustained, that the defendants' right to make an offer of proof is reserved?

The Court: That is right. But the objection is sustained [2369] to these on the ground solely that they are immaterial.

Q. (By Mr. Margolis): There is a fishing fleet that fishes out of San Pedro known as the purse seine fleet, is there not? A. That is correct.

Q. What type of a fleet is that?

A. There are large vessels which average in length from about 60 to 100 feet, which use net, gear, for the purpose of catching fish.

(Testimony of Jeff Kibre.)

Q. What does the term "purse seine" mean?

A. The term "purse seine" simply means a large net which is used to encircle a large school of fish, and the bottom portion of the net is pulled together and tightened up to that the fish are imprisoned. It is somewhat like closing the bottom of a purse. Just like a woman's purse is closed at the top and completely encompasses the opening, so the purse seine net is pulled together, or pursed together, and that has come to be known as a purse seine net.

Q. And these boats are boats that fish with purse seine nets, is that right? A. That is right.

Q. When was the purse seine fleet in San Pedro first organized, to your knowledge?

Mr. Dixon: Object, your Honor, on the ground that it is immaterial. [2370]

The Court: I do not know whether it is immaterial or not. The objection is overruled.

Mr. Dixon: I might say, and I believe counsel for the defendants will agree, that the boats involved here are not purse seine boats.

Mr. Margolis: That is right. The boats involved here are not purse seine boats but they are fishermen and there is a relationship between the purse seine boats. Purse seine boats do bring in some of the market fish. This is what we intend to prove.

The Court: Objection overruled. I do not think, if that is correct, that the materiality or immateriality will appear.

The Witness: The purse seine fishermen at San Pedro began to organize in about 1934.

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): How were they organized at that time?

A. They were organized at that particular time into what was known as the Fishermen and Cannery Workers Industrial Union.

I might say also that particular union, when it was so organized in 1934, did not only include purse seine fishermen, it included all types of fishermen in San Pedro.

Q. It included the small boats which are now organized in Local 36, one of the defendants? [2371]

A. Yes, it did.

The Court: Let me ask you a question. There are two types of fishermen that may be described as purse seine fishermen and fresh fish fishermen?

The Witness: I will tell you, your Honor, the fleet is roughly divided up into what are called large boats and small boats. The dividing line, however, is rather narrow, and the two tend to come together in fact. There are some fresh fish market fishing boats which are actually small purse seine boats. But just for common usage in the industry we tend to speak of the large boats or the purse seine boats and the small boats.

The Court: The small boats being the fresh fish boats generally and the large boats being the purse seine or cannery boats?

The Witness: Well, put it this way: that more of the small boats fish for the fresh markets than the large boats.

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): Would it be correct to say that with all of the large boats, purse seine fleet, the fishing for market fish is incidental?

A. That is right.

Q. Whereas with the small boats, with some of them it is not at all incidental but is their main occupation, is that right? [2372]

A. It is much more important to them, that is, to the small boats than to the large boats.

Q. And the purse seine fleet fish almost exclusively for the canneries, is that right?

A. That is right.

Q. Does the small boat fleet also fish for the canneries?

A. Oh, yes, they fish very extensively for the canners in Southern California.

Q. Has that been true at all times that you have knowledge of the existence of small boats?

A. Yes. In fact, in the early days, in the 20's, practically all of the cannery fish was caught by the small boats.

* * *

Q. Even today the small boat fleet does fish for the canneries?

A. Yes, definitely.

* * *

Q. Had you stated the name of the union to which both types of boats were organized in 1934?

A. Yes. It was the Fishermen and Cannery Workers Industrial Union at that time. Its name was subsequently changed.

(Testimony of Jeff Kibre.)

Q. To what?

A. To the Deep Sea and Purse Seine Fishermen's Union.

Q. Now at the time that this particular organization was formed, were any steps taken by this organization to obtain a contract for its members?

A. Yes.

Q. What steps were taken? Will you tell us?

Mr. Dixon: May I ask this witness one or two questions, your Honor? [2374]

The Court: On voir dire?

Mr. Dixon: Yes, your Honor. I perhaps can do it with one question, your Honor.

Mr. Kenny: No objection?

The Court: You haven't any objection?

Mr. Kenny: No.

The Court: Very well.

Voir Dire Examination

By Mr. Dixon:

Q. Mr. Kibre, are you personally acquainted of your own knowledge concerning these contract negotiations that you are about to testify to in 1934?

A. You mean am I acquainted——

Q. Personally acquainted of your own personal knowledge with the facts that you are about to testify to concerning these so-called contract negotiations in 1934?

A. I am acquainted of my own knowledge from the standpoint that the original organizer of the union in San Pedro is still present and is still an officer of the union, and from him——

(Testimony of Jeff Kibre.)

Q. That is not my question, Mr. Kibre. Did you participate in these negotiations?

A. No, I did not.

Q. Were you associated in any way with the Fishermen and Cannery Workers Union in 1934?

A. As a matter of fact, I didn't become associated with the union until 1940.

Mr. Dixon: That is what I understood.

I think, your Honor, that this witness is not competent to answer the question.

The Court: Let me hear the main question again.

(The record referred to was read by the reporter as set forth above.)

The Court: Do you want to ask some more questions?

Mr. Margolis: I will withdraw that question for the moment.

Direct Examination

(Continued)

By Mr. Margolis:

Q. In connection with the various activities in which you have engaged, that you have previously testified about, have you made a study of the entire history through its files and through various recorded decisions of the union? A. Yes.

Mr. Dixon: Objected to, your Honor. That is wholly immaterial as far as this witness is concerned. If the testimony that is endeavored to be

(Testimony of Jeff Kibre.)

elicited from this witness were competent, clearly the records of the association, if any, would be the best evidence.

The Court: Yes, I think the records would be the best evidence, if it is admissible. [2376]

What was your present pending question, or is there any?

Mr. Margolis: There is a present pending question which asks him whether in connection with his various duties if he had made a study.

The Court: The objection is sustained.

Mr. Margolis: Your Honor please, I just want to state this, that if this were the rule no corporation official could testify with regard to the activities of an organization. I think it is his common experience which is required in the course of his duties, historical information, and it is part of his regular function to do so, so he is qualified as an expert on that subject and can testify.

The Court: I think you can have the records here and somebody who has charge of them can testify as to what these records might reflect, because it is hearsay testimony and it is an encroachment upon the hearsay rule which is permitted under certain circumstances. I do not know what materiality it would make anyhow, or what difference what steps were taken. However, I will overrule the objection and get on.

The question was, are you familiar with the records, minutes and proceedings of the union.

The Witness: Yes.

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): What steps were taken in 1934?

The Court: Same objection? [2377]

Mr. Dixon: Yes, your Honor.

The Court: Same ruling.

Mr. Rubin: And on the further ground it is too remote, your Honor.

The Witness: The union was organized around the question of getting a minimum price contract for sardines, tuna and mackerel delivered to the canneries. That was actually the objective that led to the organization of the union. And their first step was an attempt to secure from the canneries such a contract.

Mr. Dixon: If the Court please, I believe that is clearly a conclusion of this witness and I would move that it be stricken and the jury instructed to disregard it.

The Court: I will so instruct the jury unless the defendants will make available to the Government the records which this defendant has based his conclusion upon for this examination.

Q. (By Mr. Margolis): Will you make those available, Mr. Kibre?

A. Yes, I think we can make a great deal of that information available. A great deal of that information, your Honor, is contained in a yearbook which was published in 1940, in connection with the International convention, at which time the representatives of the various affiliates gave reports which were printed in this yearbook, dealing with

(Testimony of Jeff Kibre.)

the history [2378] of their particular affiliate, how it was organized, what happened, and so forth.

The Court: Then I do not think the testimony is admissible.

Mr. Rubin: It is hearsay on hearsay.

The Court: Yes, it is hearsay on hearsay.

Mr. Dixon: And self-serving.

The Court: I do not say that they are inaccurate, but having been a secretary of several organizations myself and made annual reports, I think better evidence should be had.

Mr. Margolis: If your Honor please, the question of what the demands were, what the contracts were, that is not so. As to the questions of the arguments before them, that might be true.

The Court: The witness' knowledge in respect to it is too remote. It is hearsay on hearsay. If he had examined specifically the minutes of the meetings, documents, letters, correspondence, and so forth, and reached his conclusion, that would be different.

The jury is instructed to disregard the answer of the witness.

Q. (By Mr. Margolis): Have you examined such original documents?

A. Yes, I have read the complete files in San Pedro of the union going back to 1934. [2379]

The Court: But you just got through stating your testimony was based upon the yearbook and reports of secretaries.

(Testimony of Jeff Kibre.)

The Witness: That is a summary, but I just mentioned that because I thought that it might be helpful. I have read the complete file of the records and minutes of the meetings going back to 1934 in San Pedro where they are available, where I maintain a sub-office, I might point out.

Q. (By Mr. Margolis): Is your testimony based upon those original records which you have examined? A. Yes.

The Court: Those records will be made available to Government counsel for their perusal?

Q. (By Mr. Margolis): Can we have them here tomorrow morning?

A. We can bring in the complete file with everything dealing with the union.

Mr. Margolis: That is in San Pedro, your Honor. That is why we asked for tomorrow morning.

The Court: You will have it here tomorrow morning?

The Witness: Yes.

The Court: Just the documents upon which you based your answers.

The Witness: Well, I don't know whether we can select the exact ones, your Honor. [2380]

The Court: Well, you said all the records.

The Witness: Yes, I say this, that I have read the complete records and I am speaking from a knowledge of the records.

Mr. Margolis: The point is, we will produce the file which includes the records upon which this was based.

(Testimony of Jeff Kibre.)

The Court: That will be produced?

Mr. Margolis: Yes, sir.

The Court: Very well. Then I will withdraw my instruction to the jury to disregard the last answer.

Q. (By Mr. Margolis): Was a contract prepared at that time?

A. A contract, yes, for a price of sardines——

The Court: Just a moment. Was a contract prepared, was the answer.

The Witness: Yes.

Q. (By Mr. Margolis): You can produce that?

Mr. Dixon: If the Court please, I assume that we have a continuing objection?

The Court: Yes. He said he is going to produce it.

Q. (By Mr. Margolis): Can you produce that contract tomorrow?

A. I am sure the contracts are in the files in San Pedro.

Q. Now at that time was any action taken by the union [2381] for the purpose or in connection with the securing of that contract?

A. Actually a contract was not won until——

The Court: No. Was any action taken by the union?

The Witness: Yes.

Q. (By Mr. Margolis): For the purpose of securing a contract? A. Yes.

Q. What action was taken?

A. They went on strike. [2382]

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): Were the purse seine fishermen on other parts of the coast also organized about the same time?

A. About the same time.

Q. Where were they organized?

A. In the Puget Sound area—that is out of Seattle—the entire Puget Sound area.

Q. Are you familiar with the action that was taken there at that time? A. Yes.

Q. What action was taken?

A. The salmon purse seine fishermen in the Puget Sound area organized what was called at that time the Salmon Purse Seine Fishermen's Union, and the herring purse seine fishermen who fish herring in Alaska but who are based on the Puget Sound area at about the same time organized what was called the Herring Purse Seine Fishermen's Union.

Q. When you say they are based in Seattle, you mean that their home port is in Seattle and they go up to Alaska and fish and then come back to Seattle, their home port, is that right?

A. That is right.

Q. Now subsequent to that, or at or about that time, were these organizations separate and independent of each other or were they combined?

A. These organizations were all independent of each other.

Q. Was there at a later time a combination of these organizations in any form, and if so, in what form?

(Testimony of Jeff Kibre.)

A. Yes, there was. In 1936 the various purse seine organizations which, by the way, were as in San Pedro included other types of vessels, small boats, came together and formed what was called the Federated Fishermen's Council.

Q. That was in 1936? A. 1936.

Q. I wonder if very briefly you could just give us the highlights of organizational changes which have taken place since that time without going into great detail.

Mr. Dixon: If the Court please, I rise at this point to object to any further line of questioning along this line on the ground that it is completely immaterial in so far as this association and its activities are concerned.

The Court: I think it is preliminary. On that basis the objection is overruled.

Mr. Margolis: Do you want the question read?

(The question referred to was read by the reporter as set forth above.)

The Witness: The Federated Fishermen's Council was organized in December of 1936. Immediately within a few months after its organization, in 1937, the Federated Fishermen's [2384] Council applied to the Committee for Industrial Organizations, as it was known at that time, for a charter.

Such a charter was granted late in 1937, a charter for a new International union to be known as the International Fishermen and Allied Workers, with jurisdiction over all fishermen and allied workers

(Testimony of Jeff Kibre.)

in the coastal waters of the United States, Alaska and the Great Lakes. That was granted late in 1937.

The new International was thereupon set up on the basis of the various fishing organizations that had come together in the Federated Fishermen's Council and the new International began its operation in 1938.

The Court: What do you mean, the new International?

The Witness: That is the former organization.

The Court: That is the organization of which Local 36 is now a part?

The Witness: That is correct.

Q. (By Mr. Margolis): But bearing the same name, is that right? A. That is right.

Q. And with the same affiliation except what was then the Committee for Industrial Organizations now became the Congress for Industrial Organizations? A. Yes.

The Court: The name of the federation was changed to [2385] what?

The Witness: The name of the Federated Fishermen's Council was changed to the International Fishermen and Allied Workers of America.

The Court: So that that is an organization covering all the United States?

The Witness: That is correct, with jurisdiction over all of the fisheries in the United States. Its main membership is concentrated on the West Coast and, to a large extent, consists of these early

(Testimony of Jeff Kibre.)

fishing organizations which had organized independent associations in various areas up and down the West Coast.

The Court: Which have now become chapters?

The Witness: That is correct.

The Court: Local 36 is what chapter?

The Witness: Local 36 is simply a local with the number 36. Local 36 was formerly the Fishermen and Cannery Workers Industrial Union in San Pedro. Its jurisdiction covered purse seine fishermen in San Pedro.

Mr. Margolis: We intend to cover that. I wanted to cover the International first and then bring in Local 36 afterwards.

I have a document here that I want marked for identification.

The Court: J for identification. [2386]

(The document referred to was marked Defendants' Exhibit J for identification.)

Q. (By Mr. Margolis): I hand you a document which has been marked for identification Defendants' Exhibit J and ask you what that is.

A. This is the constitution of the International Fishermen & Allied Workers of America.

Q. I noticed that this constitution has the statement: "As amended by referendum ballot certified April 15, 1942." I take it then that is not the first constitution that was adopted, is that right?

A. That is correct.

(Testimony of Jeff Kibre.)

Q. It is the original constitution as subsequently amended.

A. That is right.

Q. Now has this constitution been amended since April 15, 1942?

A. Yes, with respect to one clause, and that is the arrangement whereby the local affiliates pay per capita to the International. That is the only change.

Q. Can you produce copies of that change if it is desired?

A. They are now being printed in Seattle. I can give the exact change.

The Court: When was the change made? [2387]

The Witness: That change was made last year.

The Court: Was it made before or after August 23rd?

The Witness: It was made—I am just trying to recall whether the referendum ballot was completed as of that time. As I recall, the referendum ballot on the change was completed just sometime in August or thereabouts.

Mr. Margolis: We have no objection to producing the amendment if counsel for the Government desires it. It is a slight organizational change.

Now, if your Honor please, at this time we offer in evidence the constitution of the International Fishermen & Allied Workers of America, affiliated with the Congress of Industrial Organizations, as amended by referendum ballot certified April 15, 1942, which is now marked Defendants' Exhibit J for identification.

(Testimony of Jeff Kibre.)

The Court: Admitted.

(The document referred to was received in evidence and marked Defendants' Exhibit J.)

Mr. Margolis: I would like to read portions of it.

Ladies and gentlemen of the jury, this document which is in evidence will be available to you so that you can, if you desire, examine it in its entirety, however, at this time, I want to read to you certain portions of the constitution.

* * *

Q. What is the policy and practice of the union with respect to the admission or non-admission of working fishermen or owners of boats who do not work? [2390]

* * *

The Witness: Our International executive board has enunciated a policy, which we urge all affiliates to follow, namely, that they should accept into membership only working fishermen.

Mr. Rubin: Your Honor please, we submit that the answer is not responsive to the question. The question, if it were read, would indicate a reference to whether or not they are owners of boats or simply working fishermen.

The Court: That is correct. I do not understand the answer. In other words, I do not know after hearing the answer whether or not an owner of a boat can join this organization.

(Testimony of Jeff Kibre.)

Mr. Margolis: Let me ask this:

Q. Is an owner of a boat who is also a working fishermen eligible to join this organization?

The Court: I wouldn't know from that answer what is a working fisherman. That is the key to your question.

What do you call a working fisherman?

The Witness: Anyone who works on a boat, your Honor.

The Court: Including an owner of a boat?

The Witness: That is right.

Q. (By Mr. Margolis): If he works on the boat as part of the fishing operation, is that right?

A. That is right. [2391]

Q. Now using that term "working fisherman" as a man who works on the boat in the fishing operation, does your organization admit into membership working fishermen who are also owners of boats?

A. Yes, we admit working fishermen who are owners of small boats.

The Court: What do you mean by small boats? What is a small boat?

Mr. Margolis: All right. Go ahead.

The Witness: The answer is, yes, that we do admit owners of boats, providing they are working on the boat.

The Court: Whether it is a big boat or a little boat?

The Witness: On large vessels, on large fishing vessels, the policy has been—and this is where the

(Testimony of Jeff Kibre.)

problem has arisen—to accept only those working fishermen on the boat. Now generally on a large fishing vessel the owner of the boat is a canner, is an absentee owner, and we don't permit them into the union.

The Court: What is a small boat? You say a small boat and a large boat. Say it is a 100-foot boat, and one of these men over here owned the boat and he worked on the boat, would he still be eligible to join the union, or could he join the union, or the organization?

The Witness: On the large vessel such as that, generally the boat owner is not a member of the union. [2392]

The Court: He can't be?

The Witness: That is correct.

The Court: That is correct, that he cannot be?

The Witness: No.

The Court: Where is the dividing line?

The Witness: I was trying to explain it. There is no sharp dividing line in this sense, your Honor, that many of the fishermen on the large boats, that is, on the purse seiners, do own a share in the boat, or are part owners of the boat, and these men are eligible and become members of the union. The dividing line has grown up somewhat along these lines, that absentee owners of the fishing vessels, whether they be fishermen or whether they be canners, are not eligible to become members of the union. [2393]

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): What do you mean by absentee owners?

A. That is persons who invest in a fishing vessel for their profit.

Q. And who do not themselves work on that particular vessel, is that right?

A. Yes, that is correct.

The Court: In other words, one of the gentlemen here, Smitty they call him, he might own one boat and fish on it, and he might own six other boats, but he can only have one membership, is that right?

The Witness: That is correct. [2394]

* * *

Q. (By Mr. Margolis): Article III of the Constitution Organization and Representation:

“The organization shall be composed of local unions, district unions and organizing committees affiliated to the International.”

Will you tell us what the difference is between a local union, a district union, and an organizing committee?

A. A district union is a union which extends over a fairly large area. For example, the Alaska Fishermen's Union, which is an affiliate of our organization, is a district union; the membership of that union, a large portion of them, live in the North Pacific States, and they go up to Alaska in the summertime to fish. Additional membership in that union lives in Alaska. The union has branches

(Testimony of Jeff Kibre.)

in Seattle, for example, Portland, San Francisco, and then at least in half a dozen locations in Alaska. That is a district union.

A local union is one such as Local 33 here in San Pedro, where its jurisdiction is confined to a single port. Now, Local 36, which is involved in these proceedings, is a district union. Its jurisdiction extends over a number of fishing ports.

Q. What is that? [2395]

A. From Morro Bay to San Diego.

Q. Morro Bay to the southern limits of the United States?

A. Yes.

Q. On the Pacific Coast?

A. That is correct. That is the distinction between a local union and a district union.

Q. An organizing committee is——

A. An organizing committee may be a group of fishermen in some fishing port who have set themselves up as a committee to organize the fishermen in that port, and they may thereupon be chartered by the organization as an organizing committee, and when they actually organize a local or district union then we finally issue them a charter as a regular affiliate.

Q. Section 2 of the same article reads. "The head——

* * *

Q. Now, I want to pause at this point and ask you this question: In all of your organization does any member of the organization have more than one vote? A. No.

(Testimony of Jeff Kibre.)

Q. Does each member have one vote?

A. Precisely.

Q. Are there any payments of any kind of dividends made by the organization or any local thereof to any of its members?

A. No. [2398]

* * *

How many locals does this International have affiliated with them? [2401]

A. At the present time we have approximately 50 active locals.

Q. Generally, without giving us the specific details, where are those locals located?

A. Throughout up and down the west coast from Bristol Bay, which is one of the extreme northerly points in Alaska, to San Diego on the Pacific Coast, and in the Great Lakes on Lake Erie, Pennsylvania, down in the Gulf, and to some extent on the East Coast in the Chesapeake Bay area.

Q. I think you already said that the majority of your membership are out here on the Pacific Coast, is that right?

A. That's right; that's right.

Q. In any port which you have organized is the organization limited to one local, or are there some ports in which the fishermen are organized into more than one local?

A. In some ports there are two locals.

Q. Give us just one or two examples.

A. One example is San Pedro, we have Local 33 and Local 36, although Local 36 includes not

(Testimony of Jeff Kibre.)

only the port of San Pedro but other ports in Southern California as well. In Seattle we have two locals; Local 3, which is a district union extending throughout the Puget Sound area, and in addition we have Local 53, which is largely limited to the immediate vicinity of Seattle. Those are two examples. Well, in Astoria we also have two locals. We have the Columbia River [2402] Fishermen's Protective Union, which extends throughout the area of the Columbia River, and we have another local there, Local 50, which is confined largely to vessels based at Astoria itself.

Q. I think you already testified that in 1934 the purse seine fleet was first organized at San Pedro, and at that time it included small boats, as well as the purse seine fleet. Will you please sketch very quickly and briefly for us the development of organization in the Southern California area since the purse seine fleet was organized in 1934 as you have outlined?

A. Originally the small boat fishermen in San Pedro, for example, were a part of Local 33; the small boat fishermen in Newport at the time were members of another local union known as Local 36; so up to 1940, or, rather, in 1940, to fix a period, the small boat fishermen in San Pedro were a part of Local 36, the only other organization in Southern California was Local 36, which was confined to Newport at that time, and which——

Q. May I interrupt you a moment? I think you misspoke yourself. You said the small boat fishermen in San Pedro were a part of Local 36.

(Testimony of Jeff Kibre.)

A. Were a part of Local 33. I am using the year 1940 because we can fix it as of a given date. At that time the small boat fishermen in San Pedro were a part of Local 33, and the only other organization we had in Southern California was [2403] Local 36, which was based in Newport Beach, and which included small boat fishermen. After the war started the small boat fishermen found it very difficult to operate out of San Pedro, because of naval restrictions governing the entry of vessels into San Pedro, a large number of small boat fishermen based in San Pedro began to deliver their fish at Santa Monica, and the fish that they delivered to Santa Monica was thereupon trucked to the canneries in San Pedro and in Long Beach.

Q. When did this start,—about 1940?

A. This started about the summer of 1942 after the war started.

Q. I see.

A. And early in 1943, or, rather, in the spring, the late spring of 1943 we began an organizing campaign in Southern California to bring the small boat fishermen in Santa Monica, Redondo and Newport, into an overall union. This was in the late spring of 1943. Shortly thereafter in 1944, after the organization of fishermen in Santa Monica and in Redondo, and the reorganization of the fishermen in Newport on a much larger scale we thereupon set up Local 36 as a district union. In other words, the jurisdiction of Local 36 which had originally

(Testimony of Jeff Kibre.)

been confined to Newport Beach was now enlarged to include all of the small boat fishermen in the Southern California area from Morro Bay to San Diego.

The Court: When was this? [2404]

The Witness: This was in 1944.

The Court. What time of the year?

The Witness: As I recall it was late—as I recall, I think it was in the early summer of 1944. It was on the basis of a ruling taken by the International Executive Board upon a request from Local 36.

Q. (By Mr. Margolis): In other words, Local 36 made the request to the International Executive Board for the organization of all small boat fishermen in this area into Local 36, is that right?

A. That is correct.

Q. That was granted——

A. Sometime in the late spring or summer, or thereabouts, of 1944.

Q. I see. What happened after the request was granted?

A. After that request was granted the small boat fishermen who had been in Local 33 thereupon were asked to join Local 36 and to become a part of Local 36.

Q. Did that take place?

A. That did take place.

The Court: What happened to Local 33 then?

The Witness: Local 33 remained as a local confined to the large vessels, the purse seine vessels.

The Court: In other words, cannery fishermen?

(Testimony of Jeff Kibre.)

The Witness: I can put it this way: that it was confined [2405] to purse seine fishing and the jurisdiction of Local 36 as it is defined in the Constitution of Local 36 includes all fishing other than vessels using purse seine or lompare gear. Lompare is similiar to purse seine. The reason I didn't say that Local 36——

The Court: In other words, Local 36 covers everything except purse seine or lompare.

The Witness: That is right.

Q. (By Mr. Margolis): Lompare gear is a similar type of gear to purse seine?

A. Yes, quite similar.

Q. That is always used on large boats, is that right?

A. That is correct.

Q. No small boats use either purse seine or lompare gear, do they?

A. It is just impossible for small boats.

The Court: To use purse seine?

The Witness: To use the kind of purse seine gear that we are discussing here.

The Court: They do use purse seine, though?

The Witness: Here is where confusion has arisen. For instance, in Alaska a large number of boats fishing salmon use what is commonly described as seine gear, and is confused with purse seine. Actually it is gill nets or drift nets. A purse seine is a very large net, extraordinary [2406] large net, and it requires a large vessel with mechanical power to operate the net, with a boom, for example. And a great deal of operation in purse seine requires

(Testimony of Jeff Kibre.)

the use of a boom, mechanical power, as distinguished from small boats. They use small gear that is pulled by hand, literally. It is muscle operation in the small boats as contrasted with a great degree of mechanical power in the large boats known as the purse seines.

Q. (By Mr. Margolis): Is that true also of the lompore boats? A. Yes, yes.

Q. Are you familiar with the history of strikes by fishermen on the Pacific Coast?

A. Yes.

Q. I wonder if you could give us a brief sketch again of the history of strikes among fishermen here on the Pacific Coast?

Mr. Dixon: If the court please, I object to this question as being wholly incompetent and immaterial as far as this particular Local 36 is concerned, because it assumes that you have a valid strike to begin with, which you can have according to our contention only when you have an employer-employee relationship, which is assumed in the question.

Mr. Margolis: Let me say this.— [2407]

The Court: The history of strikes by fishermen on the Pacific Coast? I don't know. I might be here for a couple of weeks.

The Witness: I think it can be done in a minute and a half, two minutes.

Mr. Kenny: I think the court will ask the jury to disregard counsel's statement about employer-employees relationship being necessary. A new-

(Testimony of Jeff Kibre.)

boys' strike could take place and there wouldn't be an employer-employee relationship.

Mr. Dixon: It is in the indictment, your Honor.

Mr. Kenny: That doesn't make it so.

The Court: That is their position. And the jury understands by this time that they are going to receive the law from the court—I hope, anyhow—sooner or later.

The question is what is the history of strikes by fishermen on the Pacific Coast?

Mr. Margolis: I am asking for a brief summary.

The Court: I can't see how that is material. Maybe if you would make it more definite and certain, it would be, but that question is not. Objection sustained.

Q. (By Mr. Margolis): Starting in with the year 1934, the date on which the purse seine fleet in San Pedro was organized as you have testified, give us a brief history of the strikes.

Mr. Dixon: I still object, your Honor, on the ground [2408] it is entirely immaterial.

The Court: I can't see how even that would be material, counsel, the history of strikes. I don't see what that has to do with the controversy that is involved. Objection sustained.

Mr. Margolis: Do I understand, your Honor, so I may be guided with regard to making my offer of proof and also with regard to further questions, that the objection was sustained on the ground of remoteness——

The Court: It is immaterial.

(Testimony of Jeff Kibre.)

Mr. Margolis: We can't go into any strikes, in other words, other than the one involved——

The Court: I don't know. I am just saying that the objection to that question is sustained on the ground it is immaterial. I don't know what other strikes there were. I don't know whether they would be material or not material, until I am presented with the proposal. But certainly what other strikes there were since 1934 is immaterial in connection with this controversy.

Q. (By Mr. Margolis): Will you tell us what other strikes there have been in the Southern California area, that is, the area from Morro Bay south, since 1934?

Mr. Dixon: Same objection, your Honor.

The Court: Objection overruled. I will reverse myself. I will sustain the objection. It assumes there have been strikes. It assumes a fact not in evidence. [2409]

Q. Have there been strikes in the Southern California area, that is, from Morro Bay south?

Mr. Dixon: I object.

The Witness: Yes.

The Court: Since 1934, is that right?

Mr. Margolis: Since 1934, other than the 1946 strike.

Mr. Dixon: Object, your Honor, unless it is tied in with this organization, Local 36.

The Court: It might be. He said, have there been any strikes.

(Testimony of Jeff Kibre.)

Mr. Dixon: We claim whether there have been any strikes other than this is wholly immaterial unless it involved this organization.

The Court: It might. Objection overruled. His answer was yes.

The Witness: Yes.

Mr. Margolis: All right.

Q. Will you state briefly when these strikes occurred and what boats they involved?

Mr. Rubin: Now that objection is appropriate, your Honor, because it should be limited to this organization. There are AFL fishermen, there are CIO fishermen, there are big boats, there are little boats, there are canning fishermen, there are market fishermen. We submit all that would be completely immaterial to the nature of trade and commerce [2410] that is referred to specifically in this indictment that is the subject of the alleged conspiracy in restraint of trade.

Mr. Margolis: I submit, your Honor, it is all a single industry.

Mr. Dixon: There might be a legitimate labor dispute involved also.

Mr. Rubin: The fact that it is all the same industry doesn't make it all material in this case, we submit.

Mr. Margolis: It is the same industry, same area, same fishermen.

The Court: Do you want to argue? If you do, we will dismiss the jury.

(Testimony of Jeff Kibre.)

I think that your question is too broad and is too indefinite and uncertain. I will sustain the objection on the ground that it is immaterial. If it can be related to this particular controversy, then it may be material.

Mr. Margolis: All right.

Q. Have any of these strikes included boats, small boats, engaged in market fishing?

A. Yes.

Q. Now will you give us the history of those strikes which have included small boats which engage in the market fishing.

Mr. Rubin: We object, your Honor:

The Court: Objection overruled. [2411]

The Witness: There was a strike in 1938 which lasted for several months in the late spring and early summer of 1938, at a time when what is now known as Local 33 included not only purse seiners but also the small boats, the so-called market fishing boats.

Q. (By Mr. Margolis): In other words, that was Local 33 but it was the union which preceded Local 33?

A: At that time it was the United Fishermen's Union of the Pacific and included all types of fishing and all types of fishermen. That was a very lengthy strike that lasted for several months.

* * *

Q. Had the union made demand prior to going out on strike?

(Testimony of Jeff Kibre.)

The Court: That still calls for a conclusion of the witness and, as far as this witness is concerned, it is hearsay and no foundation laid. [2412]

Were you a fisherman at that time?

The Witness: No.

The Court: Were you engaged in the fishing industry?

The Witness: No, I was not.

The Court: You were not?

The Witness: That is correct.

The Court: You were not engaged in the fishing industry?

The Witness: At that time?

The Court: At any time. In other words, your first connection with any phase of the fishing industry was in 1940?

The Witness: 1940; correct.

The Court: Were you at that time engaged in work in the canneries or in San Pedro?

The Witness: No. I was a field representative at that time for the CIO and I was just down there to assist them in the strike, as a matter of fact, to assist the fishermen's union in San Pedro in the course of that strike.

The Court: In 1938?

The Witness: In 1938; that is correct.

Q. (By Mr. Margolis): Do you know whether any demands were made by the union at that time prior to going out on strike?

Mr. Dixon: Object to that, your Honor.

The Court: Objection sustained. [2413]

(Testimony of Jeff Kibrè.)

Q. Do you know whether a proposed contract was submitted prior to the strike? A. Yes.

* * *

Q. Now following that strike in 1938, were there any other strikes?

A. Yes. In the summer of 1941 there was a strike involving the small boats which at that time were members of [2414] Local 33. It was a tie-up by the small boat fleet.

The Court: That was at San Pedro?

The Witness: Yes.

The Court: And the other one was at San Pedro?

The Witness: That is correct.

The Court: Only at San Pedro?

The Witness: That is correct.

Q. (By Mr. Margolis): Were any demands prior to that strike?

A. Yes, there were demands for a contract specifying a minimum price for mackerel. [2415]

* * *

(The following proceedings were had in the absence of the jury:)

Mr. Dixon: May it please the court, before the jury comes in I would like to renew our objection to the admission of any further testimony relating to strikes as indicated by this witness. We feel that it is wholly immaterial, and I am frank to say I don't see what the purpose of the testimony is or how it could possibly be revelant to the issues

(Testimony of Jeff Kibre.)

of this case. Second, perhaps, assuming that your Honor sustains that ruling, or our objection to that line of testimony, perhaps it might save time if your Honor feels that now is the time for the proffer of such further evidence of that character as the defendants may care to submit for the purposes of the record.

The Court: Let's see. Just as we recessed at noon we were looking for some paper?

Mr. Margolis: That's right. I found we haven't got that.

The Court: What kind of paper was that?

Mr. Margolis: A contract.

The Court: A canner's demand?

Mr. Margolis: No. The union's demand.

The Court: On the canners? [2416]

Mr. Margolis: On mackerel prices. What I intend to do——

The Court: I don't think that is material.

Mr. Margolis: What I intend to do in view of the fact that I haven't the paper here is to pass on to some other subject and come back to that later.

The Court: In other words, I have permitted your questions because I don't know what the answer is going to be. If the witness would say, "Well, yes, there was a strike May 29th, but we also had one in April"—as far as I know I don't know what the answer is going to be—that would certainly be material. We will call the jury down.

Mr. Margolis: Before that is done, your Honor, I would like to understand just where we do stand

(Testimony of Jeff Kibre.)

on this. We intend to show that the small boats fished for the canneries also, and that this contract for which negotiations were entered into that resulted in strikes were contracts which directly affected the price received by the working owners and the non-owning fishermen on fish which went to the canneries. We intend to show, in other words, with regard to the canneries, the situation as far as the contract covering on the small boats the price which both owners and non-owner working fishermen received was the same as in the market, and that the situation therefore is an identical situation in this area. [2417]

The Court: The owners and non-owners received from the canneries?

Mr. Margolis: That is right.

The Court: The price that fishermen received, in other words?

Mr. Margolis: Fishermen whether they were owners or non-owners of the boats.

The Court: In short, that the price of fish was the same at the canneries as it was at——

Mr. Margolis: Another reason why we want to show this, your Honor, is we intend to show that the effect of these contracts, these cannery contracts, was to stabilize within very narrow limits the price paid for the fish in the fresh markets, because the fishermen——

The Court: What difference would that make?

Mr. Margolis: Well, the government has introduced evidence here in which they had witnesses

(Testimony of Jeff Kibre.)

testifying on behalf of the government stating when they went out there to buy fish there was competitive bidding, and all that sort of thing. We at least have the right to meet that testimony to show that is not the situation, and one of the ways—not the entire way, but one of the ways we have of showing it is that with regard to certain species of fish which have been covered by cannery contracts the effect of the fixing of the price for the canneries is to fix the price as a practical [2418] matter for the dealers, because of the fact that the fishermen always go to the canneries to sell their fish at a fixed price, and therefore that fixed a floor for the dealers below which the price of mackerel and other species of fish which were sold to the canneries could not fall, because we intend to show that the fishermen at all times could sell all of their fish to the canneries. [2419]

The Court: I see what you mean.

Mr. Rubin: That would mean, if your Honor please, that there might be another violation of the law involved here involving the canners, but that has nothing to do with this case. The fact that the canners stabilized prices also might mean another violation. As your Honor indicated, it is up to the Government to pick and choose their prosecution. We may not have gotten to them yet. But showing that the canners stabilize their fish is certainly no defense under any theory as to what we have alleged to have occurred here.

(Testimony of Jeff Kibre.)

Mr. Margolis: But we do have a right to meet the Government's testimony that there was competitive bidding for this fish, and we will show that there wasn't competitive bidding. Otherwise when the Government has introduced evidence to the effect that there is competitive bidding, are we not at liberty to make some showing to show factors that have made competitive bidding impossible?

Mr. Dixon: This case and this indictment is confined entirely to the fresh fish market and to the fresh fish that is caught and sold to those markets. What the prices are that may be paid by the canners for fish purchased for canning purposes is not an issue in this case or in this indictment.

The Court: No, I do not think it is, counsel, but you allege in your indictment that this conspiracy to fix the [2420] price was to fix the price so it was a non-competitive price.

Mr. Dixon: To fresh fish dealers.

The Court: To fresh fish dealers.

Mr. Dixon: That is right.

The Court: Suppose that there are some other factors, which they contend there is, which caused this non-competitive price. Of course you have shown under your testimony your theory that there were competitive prices fixed. Now if there were not competitive prices fixed, if some other factors entered into it, is or is there not a failure of proof on the part of the Government or isn't there a direct conflict?

(Testimony of Jeff Kibre.)

Mr. Margolis: It is a factor to be weighed by the jury. We don't contend that any one of these factors is determinative of the case.

Mr. Dixon: What purpose is the evidence competent for? I confess, maybe I am dense and can't see for what purpose it is competent, but I just cannot see it.

The Court: You say one of the purposes and objects is to fix the price of fish so as to prevent a competitive price from being fixed. In other words, to fix an arbitrary price, one that was established in a non-competitive manner. I think that is the language of your indictment, isn't it?

Mr. Dixon: To the fresh fish market purchasers entirely.

The Court: To the fresh fish market purchasers.

Mr. Dixon: That is right. A conspiracy to fix prices for that purpose.

The Court: Now counsel is urging that there are other factors which caused that non-competitive price, one of them being the fact that the canneries had a floor on certain types of fresh fish.

Mr. Dixon: That might indicate that the canners had conspired among themselves to agree on a price that they would pay to those who sold fish to them for canning purposes, which would be entirely another case and might put someone else on trial.

The Court: I think that might be true, counsel, but it seems to me as though they have a right to put that evidence in. Then if you contend that regardless of the floor put by the canners or by this

(Testimony of Jeff Kibre.)

other asserted violation, that the price that they fixed was above that or was fixed anyhow——

Mr. Dixon: It is immaterial whether it is above or below.

The Court: I think that is probably so.

Mr. Dixon: I mean, what someone else pays or what other arrangements, contracts or agreements the canners have entered into, either among themselves or with such boats as may sell them fish for canning purposes, is certainly not within the purview of this indictment.

I believe the testimony brought out on cross examination [2422] of the Government's witnesses pointed out that that type of fish, as I recall it, was not in the same market as the fresh fish market fish. It was in an entirely different category. And in the opening statement we expressly pointed out to the jury that this was a case involving the sale of fresh fish to the fresh fish market and that no canning fish was involved in this conspiracy.

Even if it were, which we submit it is not—I submit to your Honor that again whether someone else had violated the law or not, assuming for the purposes that that is what they are putting it in to prove, and then that will be something else, that someone else violated the law—that is no defense to a charge of conspiracy here that these defendants have conspired to fix the price at which they will sell their fresh fish to the fresh fish market dealers.

At least I submit that I cannot see any relevancy to it or any bearing upon it in a price-fixing case.

(Testimony of Jeff Kibre.)

That type of evidence, in our opinion, is irrelevant and immaterial, as is this evidence to which we objected that in 1938 Local 33 had a so-called strike. Whether there was or wasn't a strike, for example, is a question in which you have to determine whether there was a labor dispute. I do not see how it is competent to help this jury in deciding whether Local 36 was engaged in a labor dispute, but if that is the purpose of it then we have to determine and go into the question of what was back of [2423] that strike, so-called, whether there was a legitimate labor dispute, what the composition and membership of that particular union was, because we concede, your Honor, that certain unions may strike.

The Court: Counsel is not going to pursue it now, so let's get some evidence in.

Mr. Dixon: I want to renew our objection on the strike point and if your Honor overrules it, I would ask, if it is to go in at this time, and further testimony of that kind is to go in, that the jury be instructed for what purpose it is being offered so that they will not be confused in the issues, because we feel that it may tend to confuse them.

The Court: It is not your purpose to pursue that any further at the present time?

Mr. Margolis: Not at the present time, but I will be back at this this afternoon before very long. I will state frankly why I am dropping this. I don't have certain contracts here. I do have other contracts here to which I want to introduce some pre-

(Testimony of Jeff Kibre.)

liminary evidence, and then I am going to get to some later contracts which are the same kind of contracts. So the question will be before your Honor very shortly, I would say within the course of the next 15 or 20 minutes after we begin taking evidence.

The Court: Let me see your other contracts. Let me see what you are talking about. One reason that the matter is [2424] difficult to rule on is because I do not know whether your strikes were or were not——

Mr. Dixon: Or against whom, your Honor. As I say, our view is that this type of testimony would be very prejudicial to the Government's case because at the best it will set up a situation where, if competent or if admitted, the jury can say, well, other people did the same thing and the Government is prosecuting here for something which apparently they did before and didn't do anything about, which of course is not material to the issues in this case.

Mr. Margolis: Here is one of the contracts which we will seek to offer. It is on a little different approach. It is the northern California contract covering fresh market fish and it going to be our contention that that fish from northern California caught under that contract comes into this area in large volume and fixes price, or is one of the factors which fixes prices.

The Court: This is San Francisco?

Mr. Margolis: It includes San Francisco. It is northern California but includes other areas than San Francisco.

(Testimony of Jeff Kibre.)

I would like to say a word or two about counsel's contention. In effect he is saying that this court must, in advance of the evidence, determine that the contracts which we are offering constitute a violation of the anti-trust law. That is what he is saying. He is saying, "We say they are [2425] violations of the anti-trust law and therefore are illegal agreements and therefore the court must not admit them." If those agreements are illegal agreements and that is one of the contentions that the Government is making, it has to prove it, but here is what the Government has done in its own case: It has put in evidence as to how prices are fixed, it has put in evidence as to how the price which the fisherman gets is determined. Now are we to be allowed to put in other evidence to meet that? We contend that it is determined by other factors than competitive bidding. We contend that there are a number of factors which determine the price which the fisherman gets. So we simply have to accept their statement that it is determined by competitive bidding, or can we show what other factors determine the price? That is how simple the issue is. [2426]

Mr. Dixon: I submit, your Honor, precisely what the defendants are endeavoring to do is what this court has ruled they cannot do; put someone else on trial. If these are price-fixing contracts—and they may well be; I haven't seen them—the position of the government would be that they are not only immaterial but would be highly prejudicial.

(Testimony of Jeff Kibre.)

The Court: I think this contract would be immaterial no matter who it was presented to or who signed it.

Mr. Margolis: If your Honor please, I contend that contract is one of the factors which fixed the price of fish. Otherwise we just simply have to accept the government's statement as to how the price of fish is fixed.

The Court: No, you don't have to do that.

Mr. Margolis: How can we do that——

The Court: You can put in evidence to rebut the evidence they put in, to show what they put in isn't true.

Mr. Margolis: This is precisely what this is directed to.

The Court: How does this contract fix the price of fish? How does a strike against a cannery fix the price of fish? And a demand made, how does that fix the price of fish in 1946?

Mr. Margolis: The strike was the thing which preceded the obtaining of the contract. What happens is that there [2427] was a strike for a contract, a strike in which the small boats were involved, both boat owner and boat puller; that these contracts fix the price on fish which was sold in large volumes to the canneries, and in small volume to the market dealers. We intend to show that these contracts served the effect of fixing the price paid by the market dealers for the species of fish which were also sold to the canneries. We intend to show that that is one way in which prices were fixed and

(Testimony of Jeff Kibre.)

prices for those fish were not fixed by competitive bidding at all, as testified to by government witnesses.

The Court: Let me see. Suppose the jury accepts that, what has that got to do with the contract that you submitted and the demands you made?

Mr. Margolis: What did the government's evidence—do we have a right—

The Court: Just suppose the jury accepts that position you have just stated and says, "Well, that is true," does that make it any the less an agreement on the part of the defendants here to demand that the fish price be fixed according to that contract there?

Mr. Margolis: It would show the fact that the factors which determine the price of fish which these people can ask are not fixed by these people, they are not arbitrary prices. The government has alleged they are arbitrary prices. We show these prices are fixed by other factors to be embodied by the contract.

The Court: They are alleging you conspired to fix prices.

Mr. Margolis: That is their allegation, if your Honor please. We don't have to accept their allegation as true, or we wouldn't be here; we would have pleaded guilty.

The Court: You have to rebut it.

Mr. Margolis: We do by showing there are other factors which fix the prices.

The Court: Fix the prices that you fixed, the OPA prices in that (indicating).

(Testimony of Jeff Kibre.)

Mr. Margolis: That determined a floor on prices. Other factors besides——

The Court: Than that contract?

Mr. Margolis: That is right.

The Court: Then what is the good of the contract? What did they strike for? They submitted a contract, and if prices were fixed by other things what good was it going to do them to have a contract or strike?

Mr. Margolis: The point is it is not our contention that with regard to every species of fish this was done, but this was done with regard to certain species of fish.

The Court: To-wit, what,—mackerel?

Mr. Margolis: Mackerel, tuna, all species of tuna, there are four of five different species of tuna, and mackerel. [2429] With regard to other products, that those products were in competition with——

The Court: Well, specifically tell me what you want to prove now before we bring the jury down here again.

Mr. Margolis: There are several different types of contract we want to put in.

The Court: All right. The one that is pending now is the offer of proof of the contract for the canneries in what year?

Mr. Margolis: We are going to put in the current contract.

The Court: You had some testimony—the testimony of Mr. Kibre just before lunch, you were looking for a contract.

(Testimony of Jeff Kibre.)

Mr. Margolis: We intend to show that as far back as the court will permit us to go there have been contracts with the canneries.

The Court: That is 1940 or '44?

Mr. Margolis: I think it was 1938 or '39 we referred to. This was in 1941.

The Court: All right. What is your next one that you want to offer?

Mr. Margolis: The next contract—we will want to offer the contract of the fresh market dealers in Northern California.

The Court: This one here that you have handed up to me? [2430]

Mr. Margolis: Yes.

The Court: What date is that?

Mr. Margolis: That is the contract currently in effect.

The Court: What date was it made?

Mr. Margolis: It was entered into in 1944.

The Court: This says 1946.

Mr. Margolis: It was renewed in 1946. This was the renewal of a 1944 contract.

The Court: That is Northern California, 1944. Do you have a renewal of canners'? Have you?

Mr. Margolis: Yes, we have a renewal of the canners' agreement right up to date.

The Court: When was the canners renewed after 1941?

Mr. Margolis: Since 1938, your Honor, continuously.

(Testimony of Jeff Kibre.)

The Court: 1941 is what we are talking about. When was the next one of the canners'?

Mr. Margolis: '42, I believe.

The Court: Is it an annual contract?

Mr. Margolis: During the war they paid straight OPA ceilings.

The Court: And there was no contract?

Mr. Margolis: There was no contract, but they paid OPA ceilings. Fall of this year.

The Court: 1946 or '47?

Mr. Margolis: '46. [2431]

The Court: We have reached the appropriate state of confusion in this case; this fall is already here.

That is in 1946. There is Northern California, 1944, which is annual and is still in effect, is that right?

Mr. Margolis: Yes.

Mr. Rubin: It was renewed in 1946, I think.

The Court: What other contracts?

Mr. Margolis: We have two contracts covering the Alaska salmon industry, one of which is dated 1944, and one of which is dated 1945, which the testimony will show is entered into from year to year, and the last one was entered into for the 1947 season.

I want to say, your Honor, these contracts, if we put in evidence the entire file of contracts which have been entered into it would form a stack pretty high, and the way we intend to do it was to put in a few contracts, which are typical, we are willing to

(Testimony of Jeff Kibre.)

produce all of the rest, any contracts that the government wants produced we are willing to produce, but the manner in which we intended to proceed, in order to not have too many exhibits in the record, was to put in several typical contracts and state for how long contracts of that kind had been in effect and whether they were in effect now.

Now, we have, also, fresh fish contracts covering other areas. [2432]

The Court: The Northern California is fresh fish.

Mr. Margolis: Washington—we have two Washington agreements.

The Court: The Alaska salmon, however, is a canners' contract?

Mr. Margolis: That's right, your Honor.

The Court: All right. What else were you going to offer on contracts?

Mr. Margolis: Those are the only agreements we intended to offer at this time, your Honor, but we did intend to have testimony that there were similar agreements in effect with the statement that we would be willing to make them available to the government if it wanted to put them into evidence, but that we didn't want to put—we wanted these in by way of illustration of the kind of agreements that there were, but we don't want to put in 50 or 75 or 100 contracts into evidence, when in effect they will be cumulative, but we do intend to offer evidence that there are similar contracts.

(Testimony of Jeff Kibre.)

Mr. Rubin: If your Honor please, I would just like to make this one comment. The fallacy of counsel's argument rests in this situation: Let's take the Northern California fresh fish contract. As I understand their thesis they want to show that because the price is stabilized in San Francisco and they import fish to Los Angeles from San Francisco, in some fashion that that is a factor in computing the competitive [2433] element of price here in Los Angeles. The fallacy is this. If the situation were just precisely reversed, if this were an action in San Francisco on that particular contract which was in force up there, and they wanted to show that the reason they couldn't function under that stabilized contract, if they wanted to show in Los Angeles there was no contract and that the unstabilized fish from Los Angeles competes with the stabilized fish in San Francisco, I could possibly see some relevancy. But what they have done here is just the reverse. They are trying to show they have to have a stabilized contract here because the dealers there have entered into a similar contract. It seems to me that the conclusion doesn't follow. They have reversed the logic of the thing. If there is competition in this area here, it doesn't make any difference whether or not they put a floor on price elsewhere. As a matter of fact, it might increase competition in this area. Because here if they had a free market then the fact that San Francisco has eliminated themselves from the market by reason of a stabilized contract would simply make the competitive

(Testimony of Jeff Kibre.)

situation in San Pedro that much freer. They have reversed the situation, and that is the fallacy involved. The fact that it is stabilized in San Francisco or Oregon or Seattle or elsewhere in Los Angeles with respect to the canneries it occurs to us can in no manner affect the stability or the competitive market existing in fresh fish to these dealers at these ports.

The Court: It looks to me like it might affect it in favor of the government's point of view.

Mr. Rubin: They might show it is more stabilized, but we don't have to go to those other contracts to show a common plan or design.

The Court: If they go to work and prove your case for you and prove it is stabilized elsewhere and the union has caused the price of fish to be fixed on these contracts elsewhere, which leaves a competitive market here because that is introduced, what objection have you got?

Mr. Rubin: I submit that would nail just a few more nails in the coffin, I will agree with the court's observation, except that we know that because we perhaps are more concerned with the technicalities, but in so far as the jury is concerned they are going to get the impression that because in fifty other—

The Court: The government is going to have some very capable men argue it, I imagine. [2435]

Mr. Rubin: Apparently this jury, if it is a representative cross-section, they appear to be quite intelligent too, but they are going to get the impression, if your Honor please, that here are 50 con-

(Testimony of Jeff Kibre.)

tracts all up and down the coast and we have prosecuted only one, and I think that is the purpose of this particular type of evidence, regardless of what the avowal may be.

Mr. Margolis: Of course, if counsel chooses——

Mr. Rubin: I do not mean that in a personal way.

The Court: Ordinarily I give an instruction and I had anticipated giving it in this case that because someone else has committed the same offense is no excuse.

Mr. Rubin: And therefore this is not material, if your Honor please.

Mr. Margolis: We intend to prove quite the opposite of what counsel contends, that as a matter of fact fish coming in from areas where the price to the fishermen is stabilized undersells the fish in this area where the price is not stabilized and that there is no realationship——

The Court: That is what the Government is saying, it produces a competitive situation, and that what you are doing here is eliminating that.

Mr. Margolis: In spite of the stabilized prices in those areas the competitive position is maintained. Where fish has a stabilized price, that fish comes in here, and 80 [2436] per cent of that fish comes in here and outsells the fish where we don't have a stabilized price. It shows the competitive system is maintained.

The Court: It is maintained by what?

(Testimony of Jeff Kibre.)

Mr. Margolis: In spite of the fact that these contracts do not stop the competition in the fish, and that the fish coming in from areas where the price to the fishermen is fixed, it comes into this area and undersells fish in this area and controls the price of fish in this area.

The Court: That seems to me like it is proving the Government's case.

Mr. Rubin: And we do not at this moment need the defendants' help, with thanks.

Mr. Margolis: If we want to prove the Government's case, if it is material to that end——

Mr. Rubin: If your Honor please, the Government decides what evidence is sufficient, not the defendants.

Mr. Margolis: It is our contention that this evidence is material. We intend to argue on the basis of this evidence that actually it shows—we intend to show by this evidence that fish coming in from stabilized areas, from areas where the fisherman gets a contract price for his fish, comes in here and undersells the fish which the fisherman is forced to sell on a cutthroat basis.

The Court: How does that exculpate the defendants? [2437]

Mr. Margolis: That the stabilized agreement has no effect on consumer prices, that consumer prices are determined by other matters.

The Court: Call the jury down. I am going to sustain the objection.

Mr. Margolis: I wonder if I ought not to make an offer of proof at this time.

(Testimony of Jeff Kibre.)

The Court: Do you want to make it more formally?

Mr. Margolis: I intend to make a detailed offer of proof.

The Court: Do you want the rest of the afternoon for that?

Mr. Margolis: I think it may very well take it.

The Court: You have the jury here, why not put on some evidence so we will not waste their time?

Mr. Margolis: All right. We will put on some more evidence.

The Court: Call the jury down.

(The jury returned to the courtroom at 2:40 o'clock, p.m.)

* * *

Direct Examination

(Continued)

By Mr. Margolis:

Q. Mr. Kibre, are you familiar with the distribution system which exists in San Pedro through which the fish which is caught by the fishermen for the fresh fish market ultimately reaches the consumer? A. Yes.

Q. Will you describe that system, please?

A. I will try and give a brief thumbnail sketch and trace through the typical pattern of fish that is landed and how ultimately it reaches the consumer.

A load of fish is landed to a dealer in San Pedro. The San Pedro dealers operate generally as pri-

(Testimony of Jeff Kibre.)

marily wholesalers, or wharfside dealers. So they generally resell that fish which they have purchased from the fishermen in San Pedro to another wholesaler. Now that might be a wholesaler downtown or it might be a wholesaler in Arizona.

In the event it is a wholesaler in Arizona, that wholesaler in Arizona may in turn be a large central distributing wholesaler, who in turn resells that to another wholesaler located in some other small community of Arizona. And that third wholesaler may then sell that fish to a retail establishment, a retail store, or to a restaurant or to some other outlet whereby it finally reaches the consumer.

Now in each stage of course of distribution there may [2439] also be a broker who handles the account for the wharfside dealer or who operates in any given city and is the medium by which the fish is resold again between various wholesalers. So the fish may pass through anywhere from two to five hands before it finally reaches the consumer.

Q. In what situation would it pass through only two hands?

A. In the event that a wharfside dealer would sell it directly to a retailer. That is the only possibility.

The Court: Or a restaurant?

The Witness: That is right, or a restaurant. And that is quite exceptional.

Q. (By Mr. Margolis): To a restaurant?

A. That is right, to a restaurant.

Q. And is that how the majority of the fish is sold?

(Testimony of Jeff Kibre.)

A. No, the majority of the fish handled by the dealers in San Pedro is resold to other wholesalers.

Q. To whom does the fisherman sell? Does he sell to anyone except the wharfside dealer?

A. They sell to the wharfside dealers.

Q. There are numerous state regulations, are there not, which regulate the method of fishing and the conduct of fishermen? A. Yes, there are.

Q. Are you familiar generally with those regulations?

A. Yes, I am familiar with the Fish and Game Code.

Q. Aren't there also other regulations and rules?

A. Yes, there are regulations which the Commission itself may promulgate on the basis of the Fish and Game Code.

Q. Have you become familiar with those regulations through participation of the Fish and Game Commission?

A. It has been one of my duties to become familiar with those regulations.

Q. Tell us very generally what restrictions there are upon the manner and places at which the fishermen may fish.

* * *

The Court: The objection is overruled.

The Witness: There are several types of restrictions which affect commercial fishermen. I will try and make this very, very brief.

First is the type of gear that a fisherman may employ for the catching of certain species of fish, which is regulated by the Fish and Game Code.

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): I don't want you to go into every type of gear, but tell us generally the nature of the regulation.

A. Well, I will give you an example. In Southern California, in District 19—that is the district from the Ventura County line to the border——

Q. May I interrupt for a moment?

When you speak of District 19, what do you mean?

A. That is an area, the Fish and Game Code defines the fishing areas of California into various districts.

Q. And numbers?

A. That are numbered; yes.

Q. And you are using the term District 19 in that sense, is that correct?

A. That is correct, as defined by the Fish and Game Code.

Q. Go ahead.

A. In this district, in Southern California, a certain type of gear which is known as drag gear, or otter trawl or balloon net, is prohibited. That type of gear is used to catch what is commonly known as bottom fish, and that is entirely fresh market fish, such as sole and various types of flat fish, flounder and various types of rockfish, and most of that fish is caught by what is known as drag boat gear or balloon nets or otter trawl gear. It is a sort of a balloon dragged along the ocean floor.

The Court: That is caught up north?

The Witness: That is right.

The Court: Off of Alaska?

(Testimony of Jeff Kibre.)

The Witness: It is caught up and down the coast, with [2443] the exception of this particular area in Southern California. In Southern California that type of gear is prohibited, and the fisherman cannot employ that gear for the purpose of catching market fish in Southern California.

Q. (By Mr. Margolis): Is that type of fish caught in this area?

A. That type of fish is caught in a very limited quantity in this area.

Q. By some other gear?

A. Some of it is caught by hook and line. For example, rockfish is caught in very limited quantities in Southern California by hook and line.

Q. Will you go on with your general answer now?

A. Yes. That is the first restriction, as to the type of gear.

Q. There are other gear restrictions besides the one you have mentioned?

A. Yes. That is just an illustration.

The second type of restriction applies to where the fishermen may operate. There are certain areas of the ocean that are closed off, that are restricted and fishermen may not operate in these areas. For example, a large portion of the waters around Catalina Island are restricted to commercial fishing operations.

Q. Sport fishermen may fish in those? [2444]

A. That is correct. Only sports fishermen may fish in those closed areas, as we term them. And

(Testimony of Jeff Kibre.)

there are quite a few of those closed areas. That is the second type of restriction.

Also of course commercial fishermen are required to take out an annual license from the State Division of Fish and Game.

Q. Before you go to that, in addition to the restriction of territorial waters in which fish may be caught, are there restrictions as to time, as to seasons?

A. Yes, I was going to come to that next. The next main restriction is as to the seasons in which fishermen may catch fish, and there are quite a few of these, that is, seasons fixed by the Fish and Game Code.

One, for example, is sardines or pilchards, which is quite extensive.

Q. Can you give us any fresh market fish?

A. Salmon, which is a fresh market fish. The season for salmon in Southern California is fixed by state law. Salmon may only be taken by commercial fishermen from April 1st until September 15th.

The Court: From the ocean?

The Witness: Yes.

The Court: How about the Sacramento River?

The Witness: That is quite a headache, the Sacramento River. [2445]

The Court: They get them the year around?

The Witness: No, the season there is broken up. There are at least three seasons in the Sacramento River. Fish can be taken in the Sacramento

(Testimony of Jeff Kibre.)

River from—well, it is probably easier to give the exceptions—the exceptions, for example, are from June 15th until at the present time, September 15th, or September 10th I think it is. During that period, from June 15th until September 10th salmon cannot be taken in the Sacramento River.

Then there is a short season of about three weeks during which period the commercial fisherman may take salmon in the Sacramento River.

Q. (By Mr. Margolis): You are confining yourself to commercial fishermen, aren't you?

A. That is right. Then there is another restricted season where fishermen cannot fish and then beginning December 1st they can again take salmon in the Sacramento River. But that is just an example of how the seasons for various types of fish are fixed by state law.

Q. Are there then some species of fish in which the catch of the fish for the entire year is concentrated in a small period of time?

A. I don't quite get what the question is about.

The Court: He means the albacore season is short. [2446]

Q. (By Mr. Margolis): What I mean is this, does the fisherman fish for all species the year around and pretty much catch the same species every month so that there is an even distribution, or are there concentrations of catches of species of fish in a particular period of time?

A. Yes, very definitely. Fish runs come during certain periods, sometimes not extending over a

(Testimony of Jeff Kibre.)

period of more than 10 days or two weeks. That is what we call the peak period, the peak harvesting period. It is that time when the commercial fishermen generally harvest that particular species, during the period of the peak run.

Q. Is that fish sold to the consumer just during the 10-day period or is that fish sold all the year around?

A. That fish is sold all the year around.

The Court: In other words, it is sold to the dealer who stores it or maintains is somehow?

The Witness: That is right.

Q. (By Mr. Margolis): Then aside from the runs, there are naturally factors which control when the fisherman goes fishing?

A. Very, very definitely. As a matter of fact, the availability of fish, put it that way, is determined first of all by the general habits of the fish in so far as showing up in a particular area and, secondly, the availability of [2447] fish is also controlled by other factors such as the extent of the feed that may be available in a given area and that, in turn, that is, the feed conditions, in turn, are controlled by ocean currents, so that while we can predict generally where the fish will be and when they will be there, it doesn't always happen. In fact, this past sardine season in California, we had one of the greatest failures in history in the sense that the fish almost completely failed to show in Northern California.

(Testimony of Jeff Kibre.)

The Court: And sardines, are they feed for other fish?

The Witness: No, the sardines, to some extent are, yes, that is, to a very limited extent.

The Court: What feed do you speak of?

The Witness: The feed that I am speaking of is called plankton. It is a small germ life which abounds on the surface of the water and the majority of small fish, such as sardines or anchovies and a great many other varieties of fish feed on this plankton. This is their source of food.

The Court: And the bigger fish——

The Witness: And the bigger fish, a lot of the bigger fish, feed on the smaller fish.

Q. (By Mr. Margolis): Do some of the bigger fish also feed on the plankton? A. Yes, sir.

Q. Does the fisherman do any of these feedings or have anything to do when and where the fish will come?

A. No. Fishermen just have to take their chances with nature, that is all.

Q. Now in addition to the regulations which you have described, you started to mention license. Will you tell us about that, commercial license?

A. Yes. Each commercial fisherman, in order to fish in California waters, must take out a license from the State Division of Fish and Game. That license must be renewed annually, and the fee for that license is \$10.

The Court: Is that each man?

The Witness: Each man; yes.

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): What does that permit the fisherman to do?

A. That permits the fisherman then to engage in commercial fishing subject, of course, to the restrictions provided in the code.

Q. And there is a procedure for revoking the permit of the fisherman if he violates the code?

A. Yes, definitely.

Q. Is there any regulation of fishermen with regard to the manner in which they may dispose of their catch? [2449]

* * *

The Witness: The State Fish and Game Code provides, for example, that once a fisherman catches that fish he must dispose of that fish without permitting that fish to deteriorate or spoil, and he would be guilty of a crime under the State Fish and Game Code if he permitted his fish which he has caught to deteriorate or to spoil.

Q. (By Mr. Margolis): Is there any regulation in regard to the purposes for which certain species of fish may be sold?

A. I didn't quite get that question.

Q. The use for which the fish may be caught.

The Court: Can it be ground up and sold as fertilizer, fresh fish?

The Witness: Yes. There is, for example, certain broad provisions of that kind. Sardines, the State Fish and Game Code provides that when canners take sardines, that they must produce from each ton of sardines that they receive $13\frac{1}{2}$ cases of canned fish per ton. That is a restriction. [2450]

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): Is fertilizer also made out of sardines? A. No.

Q. Then that is a misconception?

A. That is a misconception that we have been trying very hard to correct for a good many years. Actually from sardines a very highly concentrated and important protein food is made which is used primarily to feed chickens to produce eggs, and to some extent is used for stock feed. But actually the main use is for the poultry raisers. It has been estimated by a very famous scientist at the University of California that fishmeal, the use of fishmeal for protein food for chickens, is responsible for at least 50 per cent of the increase in egg production in recent years.

Q. Is there any regulation with respect to arrangements which a fisherman must make before he goes fishing?

A. Yes. There is an order which has been issued by the Fish and Game on the basis of the code, known as General Order 12, which requires that a fisherman can——

Mr. Dixon: If the Court please, I object to this question and answer and move that it be stricken as wholly immaterial.

The Court: This is a special order, is that your contention?

Mr. Margolis: It is one of the orders issued by the [2451] commission, the same type that the witness has been testifying to.

Mr. Rubin: I wonder if counsel has a copy of it.

(Testimony of Jeff Kibre.)

Mr. Margolis: Yes, there is a copy attached to the proposed instructions, I believe. I believe you have a copy of the proposed instructions which contains that.

The Court: By the way, while counsel is looking for that, is it the custom among fishermen to always fish for the same type of fish throughout the year?

The Witness: The same type of fish throughout the year?

The Court: Yes. For instance, Mr. Knowlton, here, does he always fish for sea bass or does he fish for sea bass for a while and whatever might be running.

The Witness: They generally fish for what is running. In other words, they may fish for three or four different species of fish in the course of an entire year. That is pretty much the pattern of the entire fishing industry.

The Court: There were a number of fishermen on the stand and one of them said he was a shark fisherman. I suppose he has to have special gear for that?

The Witness: Definitely. And he may only fish shark for about six months out of the year because there is only about six months of the year when sharks are available and when the livers are of the sufficient potency to make them commercially desirable. [2452]

The Court: So that as a general thing the fresh fish fishermen will fish different varieties of fish as the fish are running or as the season comes?

(Testimony of Jeff Kibre.)

The Witness: That is correct. It is quite comparable to a truck gardener who raises different types of vegetables for truck garden purposes throughout the course of the year. In certain months there might be radishes, then it might be tomatoes, and so forth. It is pretty much the same thing. The fisherman harvests the different species of fish as they become available.

The Court: He is limited only by his type of gear, I suppose?

The Witness: Yes, that is right.

The Court: And by certain type of gear I mean, for instance, to catch sardines you have to have a special net?

The Witness: A special sized vessel and gear.

Mr. Margolis: And by the regulations also?

The Witness: Yes. I was going to add that, by the regulations also.

The Court: As a general proposition, the sardines are not looked upon as fresh fish?

The Witness: That is correct.

The Court: In other words, they fish for the canneries?

The Witness: That is right.

The Court: A very small percentage goes into the fresh [2453] fish market?

The Witness: Yes, a very small percentage goes in, primarily for bait purposes.

Q. (By Mr. Margolis): Mr. Kibre, you have referred to General Order No. 12—

(Testimony of Jeff Kibre.)

The Court: Let me see it before you ask him any questions.

(The document referred to was passed to the Court.) [2454]

The Court: Is there a question pending?

Mr. Margolis: I started to ask a question but didn't finish.

The Court: Counsel was objecting when he asked for a copy of the order.

Q. (By Mr. Margolis): I show you the language in quotes here——

The Court: Don't read it, counsel.

Mr. Margolis: I am not going to read it, your Honor.

Q. (By Mr. Margolis): ——and I will ask you whether or not that is general order No. 12 to which you have referred. A. Yes.

Mr. Margolis: At this time, your Honor, I would like to read that regulation to the jury as a fact of which it can be introduced into evidence through the process of judicial notice. This was merely for the purpose of identifying it.

Mr. Dixon: If the court please, we object to the proffer on the ground it is immaterial and on the ground it is not the best evidence.

The Court: Objection sustained on the ground it is immaterial.

Mr. Margolis: I really want to say, your Honor, I am caught by surprise. This is just another one of the regulations and the most important of them all.

(Testimony of Jeff Kibre.)

The Court: You shouldn't be caught by surprise, because [2455] that relates to canners, this doesn't relate to fish dealers. In any event, I have made by ruling, and you are not the only one that is surprised sometimes. The appellate courts have been surprised at some of my rulings.

Mr. Margolis: If your Honor please, we would like to show this is not limited to canners.

The Court: The objection is sustained, counsel. Let's move on.

Mr. Margolis: I would like to ask this question:

Q. (By Mr. Margolis): Does General Order No. 12 apply only to canners?

Mr. Dixon: We object to that, your Honor.

The Court: On what ground?

Mr. Dixon: This witness isn't construing, or is not an official of the State——

The Court: The objection is sustained.

Q. (By Mr. Margolis): In practice is General Order No. 12——

Mr. Dixon: Same objection.

The Court: Same ruling. It is immaterial.

Mr. Margolis: I understood your Honor to say it was immaterial because it applied only to canners. We want to show it applies also to fresh market fish.

The Court: The objection is sustained. The document is immaterial. If it were material I would read it to the [2456] jury at the appropriate time.

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): During the course of your duties as an officer of the International Union have you become familiar with the methods of catching fresh fish in the Southern California area as compared with methods used under the laws and under the seasons in other areas? A. Yes.

Q. First of all, how does the catch of fresh market fish in the Southern California area compare with the catch of fresh market fish in other areas on the Pacific Coast?

A. The catch of fresh market fish in Southern California compared with other areas is extremely low. That is, the Southern California catch of fresh fish is extremely low.

Q. Can you give us some indication?

A. Yes. It is far below that of Northern California. In fact, the total catch in the Southern California area is below that for one port in Northern California, such as the port of Eureka. As a recall the last figures for Eureka, the annual landings I think in 1946 were approximately 25,000,000 pounds. I recall that because the catch in about 1938, '39 was only 5,000,000 in Eureka, and it has steadily increased to the point where it is now 25,000,000 pounds or five times over what it was previously. That is one port.

Q. In Eureka, from what year to what year did it increase? [2457] A. Since about 1939.

Q. Since 1939 to the present time it increased from about 5,000,000 pounds to about 25,000,000 pounds? A. That's right.

(Testimony of Jeff Kibre.)

Q. What has been the situation in Southern California over that period?

A. I think the fresh market catch in Southern California has not shown any corresponding increase. It has run along pretty much the same year after year within limits of whether or not fish were available of a given species.

Q. There are variations from year to year?

A. Yes, there are variations, but the variations in Southern California has shown no decided trend up or down.

Q. Where in Northern California it has increased about five times?

A. Yes, a steady upward trend.

Q. What about the situation in an area like Seattle?

A. In Seattle the trend has been very decidedly upward since 1938 also. As I recall the figures, just for one—well, take the fresh market catch of bottom fish caught by the trawl fleet in 1938, there were about 2,000,000 pounds landed. The reason I remember that is that was the time the first agreement was negotiated. In 1946, last year, the trawl catch in Seattle was well into thirty million pounds, about 33,000,000 pounds, as I recall, in the year 1946. That [2458] is all market fish.

Q. From——

A. From about two and a half million up to 33,000,000 pounds, approximately.

Q. Since 1938? A. About 1938.

(Testimony of Jeff Kibre.)

Q. And is that the time when the first agreement stabilizing prices for market fish was entered into? A. Yes.

Mr. Dixon: If the court please, I object to the question and I move that the answer be stricken.

The Court: Objection sustained. The answer is stricken.

Mr. Margolis: Your Honor, we think this is the basic——

The Court: I know what you think, counsel. I have listened to you, given you half days and days at a time for argument.

Mr. Margolis: For the sake of the record I want to ask another question.

Q. (By Mr. Margolis): When was the agreement for stabilizing prices for fresh market fish in Eureka entered into with reference to the period when the increase started?

Mr. Dixon: Same objection, your Honor.

The Court: Same ruling; objection sustained.

Q. (By Mr. Margolis): Does the fish that is caught in Northern California and Seattle, fresh market fish, come into [2459] this area for sale to the consumer?

A. The Los Angeles market area is a main market area for all of the ports on the West Coast, and a large proportion of the fish that is caught and handled in Northern California and Seattle is sent into this Los Angeles market area.

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): Does more or less fish come into the Los Angeles area, that is, Los Angeles County, from northern ports in California, as you have defined northern ports, north of Southern California, and from the Seattle area, than comes in by landings in the Southern California area?

A. Far more fish comes in from outside sources than is caught in Southern California.

The Court: That is fresh fish?

The Witness: Fresh fish, yes. Far more. I have talked to the dealers on that.

Q. (By Mr. Margolis): On the fish which is sold in the restaurants here, for example, is most of that fish fish which is caught in this area or fish which is caught outside of this area?

A. It is fish that is caught outside of this area.

Q. Have you examined restaurant menus to confirm that fact? A. I certainly have.

The Court: Restaurant menus?

The Witness: All over the city, your Honor.

The Court: How can you tell—I would really like to know—where that fish came from?

The Witness: By the species you can tell very easily.

The Court: They just say “filet of sole” and you get shark.

The Witness: I will give you a very timely way of checking that.

The Court: They say “halibut steak” and you get shark.

(Testimony of Jeff Kibre.)

The Witness: I have had shark sold to me in San Diego as filet of sole, your Honor. But I would say that is not [2461] too generally practiced by some of the better restaurants.

We conducted a spot check of that, it so happens, last spring when we were trying to get a program under way, and the Fish and Wild Life Service were assisting us. I do it as a habit now. The way you can tell is by the species of fish. For example, halibut. The main supply of halibut comes from the Pacific Northwest waters, some 55,000,000 pounds are landed up there as compared with a very limited amount of California halibut, so if it is halibut in the restaurant, in general they generally specify "Pacific halibut" because California halibut, that halibut caught in Southern California is somewhat of an inferior quality, so they will generally specify "Pacific halibut," you will know that is an outside fish. Filet of sole, well, there is very little sole landed in Southern California, because drag net gear cannot be used here, so you can generally——

The Court: Why can't drag net gear be used here?

The Witness: Prohibited by the State code.

The Court: Why?

The Witness: One reason is the Continental shelf is rather narrow——

Mr. Margolis: You had better explain what you mean by that.

(Testimony of Jeff Kibre.)

The Witness: The fish that are caught by drag net gear, so-called, are what are termed bottom fish, and these are [2462] fish which actually live on the bottom of the ocean floor, they are generally caught in depths from 50 to 80 fathoms, a fathom is 6 feet, and that is in effect the Continental shelf, that is the extension of the continent into the ocean, and the——

Mr. Margolis: The ocean drops away sharply?

The Witness: Yes. The Continental shelf will in some areas of the coast extent into the ocean for a great many miles, and in other areas the Continental shelf drops off very sharply so there is not very much shallow ocean floor, or not much what we term fishing bank. In Southern California the Continental shelf drops off rather sharply, and it has always, therefore, been the contention of the scientists and Fish and Game Commission that drag net fishing should not be permitted in this area. That is one of the contentions.

Q. (By Mr. Margolis): It is a conservation measure, is that correct? A. Yes.

Q. Because there is a limited area in which the fish are available, if you drag them out of there you will soon eliminate the fish, is that right?

A. Yes, and it would interfere with other types of fish that are not dependent upon the Continental shelf. So it is in some measure a conservation measure. In another sense it is based on the fact that the area in which fish can [2463] be cause here is somewhat restricted, so therefore they don't want

(Testimony of Jeff Kibre.)

to permit drag net gear. There may be some other reasons which I don't think would be necessary to go into, the effect on sportsmen and such. [2464]

* * *

Q. Just so we can indicate for the record an example of how you can tell where certain species of fish come from, this is a menu from Al Levy's, is it not? A. That is correct.

Q. There are listed some fish and seafood on there. I wonder if you would go down the list and indicate where they come from?

* * *

The Witness: Well, we have under the heading of "Fish and Seafood," the following items:

First bouillabaisse Provencale. I don't know the exact French pronunciations. But that is a fish stew actually in common language. And having eaten that just the other night in that particular restaurant, I can say that it contained rock cod filets, which are from northern California or from Seattle.

The Court: You mean it did that night?

The Witness: That is correct. But I can tell you what bouillabaisse generally contains because I make it myself. It consists generally of shellfish, and the shellfish, such [2465] as clams, would come from the northern area, Oregon and Washington, particularly Washington would be razor clams, and it would probably contain some lobster, as it did the other night, which might come from Southern California or from Mexico. The largest part of the lobsters in this area comes from Mexico. Or it

(Testimony of Jeff Kibre.)

might be lobster imported from the East Coast, so-called Maine lobster. And it would contain some filets, generally it contains rockfish filets. So most of the ingredients of bouillabaisse would come from out of the state.

Next, half broiled lobster. That might come from Southern California and it might come from Mexico, and some is flown in alive from the East Coast.

Fried eastern scallops. I don't think there is any question about that. There are no scallops of any note caught on the West Coast.

Broiled swordfish steak. That would be from Southern California.

The Court: As a matter of fact, scallops are caught in Newfoundland, are they not?

The Witness: There are some caught on the East Coast also, off the United States. Newfoundland is the main source; yes, that is correct.

Quite a few came from Japan also before the war. In fact, most of the scallops used on the West Coast came from Japan before the war. [2466]

Next is fried Louisiana shrimp. Broiled northern halibut.

The Court: Fried Louisiana shrimp, does that mean it comes from Louisiana?

The Witness: It undoubtedly comes from Louisiana. It might of course come from the Gulf of Mexico.

The Court: It might come from the west coast of Mexico also?

The Witness: That is right; Lower California.

(Testimony of Jeff Kibre.)

The Court: In fact, most of them in this area come from Mexico, do they not, the large prawn types?

The Witness: I would say most of the large prawns now used in this area come from Lower California, from the Gulf.

Q. (By Mr. Margolis): Are they caught by fishermen from this area?

The Witness: No, those are caught by native fishermen in Mexico. In fact, American fishermen are not permitted to take shrimp.

Broiled northern halibut. You see, the restaurants generally say "northern halibut" to distinguish it from California or, as I was saying, left-handed halibut, as it is termed in the trade.

Frogs legs—well, fresh shad roe, that undoubtedly would come from the Sacramento River.

The Court: Where does frog's legs come from? Are they [2467] raised commercially?

The Witness: I don't know. I know they are commercially raised in certain areas in the south, and that they are handled quite extensively, particularly by fresh fish dealers who import fish from the south.

Q. (By Mr. Margolis): By the "south" you mean south of California?

A. From Louisiana and the areas through there where the frogs are raised commercially.

Fresh shad roe undoubtedly comes from the Sacramento River.

(Testimony of Jeff Kibre.)

Steamed Finnan Haddie comes from the East Coast.

Filet of Cataline sand-dabs, well that undoubtedly is northern California sand-dabs because there are very few sand-dabs caught in Southern California because they can't use drag boat gear.

The Court: Or might it be bottom fish caught in Seattle?

The Witness: Sand-dabs aren't handled in Seattle. Sand-dabs are primarily handled in northern California from the drag nets. The dealers won't take them in Seattle. They are used mainly up in Seattle for fox feed, as I recall.

I mean, there are a few small landings of sand-dabs made in Southern California and it might possibly be that this was a Southern California fish.

Broiled Lake Superior whitefish. Well, that is from the [2468] Great Lakes.

The Court: That is, if it is Lake Superior whitefish.

The Witness: Yes, that is right.

And Paupiette of Monterey Sole, Marguery, which I recommend very highly, comes undoubtedly from northern California.

So virtually all of the fish on this menu comes from out of this area.

Q. (By Mr. Margolis): Would you say from your experience that that is typical of the sources of fish consumed here?

A. That is correct. [2469]

(Testimony of Jeff Kibre.)

Mr. Margolis: I have a set of minutes, your Honor, dated May 6, 1943, which I would like to have marked for identification as Defendants' exhibit next in order.

The Clerk: K.

(The document referred to was marked Defendants' Exhibit K for identification.) [2470]

* * *

The Court: This is not a copy of the minutes which have been used in evidence partially?

Mr. Margolis: No. These minutes have not been offered by the Government either in toto or in part.

Q. Mr. Kibre, I will show you a document which has been marked Defendants' Exhibit K for identification and ask you to tell us just generally what that document is.

A. This is a meeting in Newport——

Q. Is this a meeting? A. Yes.

Q. It is minutes.

A. Minutes of a meeting; that is correct.

Q. In Newport of whom?

A. Of the fishermen members of Local 36.

Q. Was that meeting held on the date that appears on the exhibit, May 6, 1943?

A. I am quite certain it was.

The Court: May 6, 1943?

Mr. Margolis: That is correct.

The Witness: May 6, 1943.

Q. (By Mr. Margolis): Did you participate in that conference? [2471]

(Testimony of Jeff Kibre.)

A. I am sure I participated. I remember the occasion very well. I was just reading over the minutes to familiarize myself with it a little bit more.

Yes, I was present at that meeting, I am sure. I don't see that it is other than the minutes, but I remember the occasion, very, very well.

Q. It refers to officers present. Those are officers of what local? A. Of Local 36.

Q. You were not at any time an officer of Local 36? A. No.

Q. Now can you tell the circumstances which led up to that conference of May 6, 1943?

A. Yes.

Mr. Rubin: That is objected to as being ambiguous and uncertain. We can't tell what the circumstances are leading up to. It is completely unintelligible.

The Court: Objection sustained.

Q. (By Mr. Margolis): Were there any events with regard to the sale of barracuda caught by fresh market fishermen which immediately preceded the calling of that conference? [2472]

* * *

The Witness: Yes.

Q. (By Mr. Margolis): Will you state what happened with regard to the sale of barracuda by fresh market fishermen—that was the Southern California area? A. That is correct.

Q. In the Southern California area just prior to the date of that conference, May 1943.

(Testimony of Jeff Kibre.)

Mr. Rubin: Your Honor please, that is objected to as being incompetent, irrelevant and immaterial, too remote. There is no foundation laid for the knowledge of this witness as to the facts that occurred there, and particularly on the first two grounds stated we urge our objection.

The Court: Let me see the minutes.

(The document referred to was passed to the Court.)

Mr. Rubin: And the further ground, if your Honor please, that the matters contained therein are self-serving. Of course the document has not been offered. I withdraw that last objection.

The Court: The objection is sustained to the question.

Q. (By Mr. Margolis): Is barracuda fishing an all-year-round operation?

A. Off the waters of Southern California?

Q. Yes. [2473] A. No.

Q. That means that it is seasonal?

A. That is right, it is a seasonal operation.

Q. When is the season?

A. The main season runs from the month of April until late in the summer. The main season is roughly April, May and June.

Q. Sometimes extending into July?

A. Yes.

Q. Barracuda is caught during other periods of the year, is it not? A. Oh, yes.

Q. What do you mean then by saying that this is the barracuda season?

(Testimony of Jeff Kibre.)

A. This is the season when a large number of small boats are engaged in catching barracuda in the local waters of Southern California.

Q. What is the relationship between the amount of fish which is caught during this season, barracuda which is caught during this season, and the amount of barracuda which is caught during the balance of the year?

A. Generally about 2 million pounds or more are caught during the spring season as compared with approximately one million pounds during the winter season from the Coast of Mexico or from Mexican waters. The main portion of the catch [2474] is caught during those months.

* * *

Q. During the period that you have been an official of the International Fishermen's Union, have you been familiar with the price ranges for the sale of barracuda by fresh market fishermen in the Southern California area?

A. Only too well. [2475]

Q. During that period has there been a difference always each year between the price paid for barracuda during the season and the price paid for barracuda caught during the non-season period?

A. Yes.

Q. And what has been the nature of that difference?

Mr. Rubin: If your Honor please, the question is objected to on the ground that it is completely immaterial. I can't see any materiality as to this

(Testimony of Jeff Kibre.)

type of evidence with respect to the issues raised by the indictment and the plea to the general issue in this case whether or not barracuda brings more during one season in the on season or off season or summer season or winter season. We submit that has nothing to do with the situation of the facts charged in this particular indictment in this particular case. We submit this line of testimony is entirely immaterial.

Mr. Margolis: May I state the purpose? I think I can state it before the jury, because it is of a general nature.

The Court: If it is in connection with the matter we discussed yesterday afternoon it is immaterial.

Mr. Margolis: This is, I think, something different. I think I can state it.

The Court: What is the purpose?

Mr. Margolis: We want to show—this is preliminary to showing certain activities of the union during this period [2476] and thereafter, for the purpose of establishing the kind of an organization the union is. We submit that the only way that we can show to your Honor and to the jury the kind of an organization that the union is is by what it does, as well as, of course, by its Constitution and By-laws. But we want to show—

The Court: All right. The objection is overruled.

Mr. Margolis: May we have the question then?

(The question was read.)

(Testimony of Jeff Kibre.)

The Witness: The price in the spring-summer season is generally lower than the price in the winter season. That is, the non-local season.

The Court: When fish is scarce the price is high, in other words.

The Witness: Fish that comes in during the non-local season comes in from Mexican waters, is caught at a considerable distance.

The Court: When the fish is scarce in these water the price is high?

The Witness: Barracuda is a migratory fish and it is only available here during certain months, and then it is caught in these areas.

The Court: And the price is low?

The Witness: It is lower. But there is also the fact, you see, when the fish is caught in the winter-time it is caught [2477] down in the Gulf of Mexico or in waters off the Mexican coast, and the boats have to travel a great distance. It is a far more expensive operation in the winter months to bring the fish in. So that customarily there has been that differential in the price.

Q. (By Mr. Margolis): At this time in May of 1943 were O. P. A. ceilings in effect on barracuda? A. They were not.

Q. At that time was there a drastic drop—I will draw that. Was there a change in the price of barracuda immediately preceding the conference of May, 1943? A. Very drastic change.

Q. What happened?

(Testimony of Jeff Kibre.)

Mr. Rubin: If your Honor please, it is the same question to which your Honor sustained an objection before that it is immaterial and remote to the issues in this case.

Mr. Margolis: This is preliminary for the purpose of showing the activities that were undertaken by the union in connection with this matter. I don't see how we can explain what the union has done without laying this sort of a foundation. The union obviously must act with reference to specific situations. Unless you can explain the situation which leads up to their action, then talking about their action is simply idle, your Honor, it is just meaningless.

The Court: It will be admitted for that purpose. If [2478] it doesn't go to that purpose it will be stricken; and the objection is overruled, with the idea that this testimony is admitted only for that purpose and not to how reasonableness or unreasonableness of price or reasonableness or unreasonableness of any alleged restraint, but only to show the function that the defendants claim the defendant union performed and not the defendants.

Mr. Margolis: The defendant union and the defendants who were at that time members of the union. We will put on these other defendants who will tell when they were members of the union.

The Court: All right. It will be for that limited purpose. And if it doesn't develop that it goes to that purpose it will be stricken and further testimony along that line will be excluded.

(Testimony of Jeff Kibre.)

Mr. Margolis: Did I have a question?

(The question was read by the reporter.)

The Witness: In the space of a couple of days, as I recall, to the best of my recollection, the price dropped from 18 cent a pound, that is to the fishermen, down to around—offers were made at six or seven or eight cents a pound, and then actually they didn't even want to take any fish at any price.

Q. (By Mr. Margolis): You say actually they didn't want to take any fish at any price. I wonder if you could say [2479] what happened, what did the dealers do?

A. In Newport I was called down to Newport when that occasion arose, many of the dealers simply posted notices "No fish wanted today."

Q. Did the union at that time undertake to make any sort of an investigation with regard to the demand for barracuda on the market?

A. Yes. At that meeting in Newport to which I was called, and for several days previous to that meeting, I requested the local to make a check on the Los Angeles market conditions, and I did so myself. For example, I called the Safeway Stores, their fish buyer, and asked them whether the market for barracuda was glutted as the dealers had informed us. We also checked with Ralph's, and I know that the local union, Mr. McKittrick here, made a very extensive check of a number of retail establishments as to whether or not they were glutted with barracuda.

(Testimony of Jeff Kibre.)

Q. What did you find? A. We found——

Mr. Rubin: Just a moment. If your Honor please, it is objected to on the ground that it calls for an opinion and conclusion of the witness and it is highly conjectural. This witness hasn't qualified as an expert in that particular field. He has testified the investigation that was made. Now he is going to testify as to some broad general conclusion as to [2480] the status of the fish market at that particular time. There might have been dozens of other factors that entered into the situation as to why these dealers didn't choose to buy fish at that time. They have just put in testimony that a great deal of fish, in fact more fish came from the north than was caught offshore.

The Court: I think the objection is good. The objection is sustained.

Q. (By Mr. Margolis): Did you find that there had been—did you by your investigation determine at what price barracuda was being sold to the customer? A. Yes, we did.

Q. Did you find at that time when there was a drop in the price to——

Mr. Rubin: Just a moment, counsel. The form of the question is leading, and I will object at this time.

The Court: Yes, it is. The form of the question is leading. Objection sustained.

Q. (By Mr. Margolis): Did you find out whether or not at that time when the price to the

(Testimony of Jeff Kibre.)

fishermen dropped, as you have indicated, there was any drop on the retail market for the price of barracuda? [2481]

* * *

The Court: It calls for a yes or no answer.

Q. (By Mr. Margolis): Did you find out whether or not it happened?

A. Whether there had been any drop in the retail price?

The Court: Whether or not?

The Witness: Yes, I found out, yes, definitely found out.

Q. (By Mr. Margolis): How did you find that out?

A. I found that out by checking the actual prices in retail stores as well as telephoning the fish buyer for Safeway. I went into a number of butcher markets and checked the actual prices.

Q. What did you find happened with regard to the price of barracuda at that time?

A. Barracuda was selling for——

Mr. Rubin: Just a moment, Mr. Kibre, please. That is objected to, if your Honor please, as being wholly immaterial.

The Court: Objection sustained.

Q. (By Mr. Margolis): Did you, after making this investigation with regard to—What action did you take after making this investigation with regard to the price and the demand for barracuda on the retail market? [2482]

(Testimony of Jeff Kibre.)

A. I contacted the O. P. A. and urged them to step into the situation.

Q. Who did you contact?

A. I contacted Leonard Kearns who was the head of the Food Price Division in the local Los Angeles office.

Q. Let me ask this question so that we can establish this. In all of this testimony—rather, in all of these things you were doing were you acting simply as an individual or were you acting for and on behalf of the union you represented?

A. I was acting for and in behalf of the union.

Q. All right. Now, following your contacting of the O. P. A. what other action did you take and what happened?

A. I thereupon contacted the local union and urged them, also, to contact the O. P. A. with a view toward having the O. P. A. call a conference of all the parties involved in this situation.

Q. Go on. Tell us what happened.

A. The O. P. A. thereupon did call a meeting in the Los Angeles district office of the union. At that meeting myself and Mr. McKittrick were represented, and they also asked a number of dealers, and there were also a number of dealers in attendance at this meeting, and we brought up the—

Mr. Rubin: Just a moment. I think that answers your question at that point. [2483]

Mr. Margolis: I want him to tell everything that was done pursuant to that, what the union did.

The Witness: We requested—

(Testimony of Jeff Kibre.)

Mr. Rubin: Just a moment. I don't think there is a question before this witness. He was asked what action was taken, and he said they called a conference. Now he is going into the conference.

The Court: "Tell us what happened." That is too indefinite and uncertain. Objection sustained.

Q. (By Mr. Margolis): Preliminary to the OPA conference was there a conference of the union itself? A. Yes, there was.

Mr. Margolis: May I have Exhibit K, please?

(The exhibit was handed to counsel.)

Q. (By Mr. Margolis): And does Exhibit K set forth a record of what happened at the conference which was called preliminary to the OPA conference? [2484]

* * *

The Witness: The minutes of this meeting give a record of the steps that we were going to take, and also represents the action of the local union in participating in the conference with the OPA. In other words, these minutes reflect the motion on the part of the local union to elect delegates to attend this conference to be called by the OPA.

Mr. Margolis: If your Honor please, at this time we want to offer Exhibit K in evidence for the limited purpose of showing the type of activities in which the union was engaged at that time.

Mr. Dixon: If the court please, we object to it on the ground it is immaterial and within the ruling previously made by your Honor.

* * *

(Testimony of Jeff Kibre.)

Mr. Rubin: If your Honor please, it is certainly remote and self-serving.

The Court: Yes, it is self-serving.

Mr. Margolis: If your Honor please, I submit——

The Court: But on occasion a document like that, a record of an organization may be admissible, and the question is whether or not this is one of those occasions. [2485]

Mr. Margolis: I think that the rule is certain books and records which are kept in the ordinary course of business are an exception to the self-serving and hearsay rule.

Mr. Rubin: We are not objecting on the ground of foundation. We submit this is part of the stipulation.

The Court: I understand both of you, I understand both of your positions.

Mr. Rubin: The minutes, if your Honor please, contain information that goes far beyond showing the purpose of this organization. We submit that is the self-serving portion of it. It may be there are certain parts of the exhibit that may be material for that purpose, but there are certainly others that go beyond.

The Court: Let me see it again.

(The document was passed to the court.)

The Court: Objection sustained.

(Testimony of Jeff Kibre.)

Mr. Margolis: I intend to offer each part separately so [2486] your Honor can rule on each part separately. Our position is this, your Honor: we want the entire exhibit to go in, which your Honor has ruled that the entire exhibit may not go in; therefore we want to offer each and every part of this exhibit separately so your Honor can determine what if any part of the exhibit we may put into evidence.

The Court: I can't see where any portion of it is material, and without putting you to the burden of offering each paragraph separately it will be deemed to have been offered separately and the objection sustained to each paragraph. Or do you object to each paragraph? Maybe you don't object.

Mr. Rubin: We most certainly do, if your Honor please. [2487]

Mr. Margolis: I wonder, if your Honor please, if we might at this time consider the rejected Exhibit K both in its entirety and each and every portion thereof as an offer of proof.

The Court: Surely. My ruling as I just made now assumed that you had offered each and every part of it altogether and each and every part of it separately.

Mr. Margolis: We want to be understood as making it now in the form of an offer of proof and ask you Honor's ruling on that offer of proof. I understand we have to make a separate offer of proof after an objection.

(Testimony of Jeff Kibre.)

The Court: The objection is sustained to the actual offer. Now you are offering to prove it?

Mr. Margolis: Yes.

The Court: I do not think it is necessary because you have offered it in evidence.

Mr. Margolis: I want my offer of proof to be not only for the limited purpose stated but in addition to the limited purpose for all of it.

The Court: The same ruling would apply. It is as immaterial and incompetent and irrelevant for one as it is for the other.

Q. (By Mr. Margolis): Now following the union meeting which has been referred to, was a meeting held with the OPA [2488] A. Yes.

Q. About when was that meeting held?

A. It was some time in May of 1943. I don't recall the exact date.

Q. Where was the meeting held?

A. The meeting was held in the Los Angeles district office of the OPA.

Q. Who was present at that meeting?

A. I was present, Mr. McKittrick was present, and several other representatives from the Newport local were present. In addition to that a number of fish dealers were present.

Q. Do you remember who they were?

A. There were several dealers from the Los Angeles wholesalers present and several from San Pedro. I am just trying to recall their names. I remember several of them, I can describe them, but I am just trying to place their names. I would

(Testimony of Jeff Kibre.)

rather hesitate to give their names. I might think of their names in a moment or two.

Q. Was somebody present for the OPA?

A. Yes. Mr. Kearns was present for the OPA. He was at that time in charge of the food price section of the OPA.

Q. In this area? A. Yes.

Q. Will you tell us what was said at that meeting and [2489] by whom?

A. We brought to the attention—

Mr. Dixon: If the Court please, I object to that as being wholly incompetent and immaterial.

The Court: Objection sustained.

* * *

Q. (By Mr. Margolis): What happened with regard to the buying of barracuda by the market dealers following this meeting?

Mr. Dixon: Same objection.

The Court: Same ruling. Objection sustained.

Mr. Margolis: I will ask you Honor at this time to have marked a document entitled "Southern California Small Boat Price Conference," dated January 11, 1944, to be marked as Defendants' Exhibit L for identification.

The Clerk: L for identification.

(The document referred to was marked Defendants' Exhibit L for identification.) [2490]

Q. (By Mr. Margolis): Mr. Kibre, I show you a document which has been marked Defendants'

(Testimony of Jeff Kibre.)

Exhibit L for identification, and I want you to state whether you recognize that document.

A. I do.

Q. Will you tell us what that document is?

A. This document is the minutes of a conference of delegates from various ports in Southern California, that is, delegates from units of the union from the various ports in Southern California, Newport Beach, San Diego, Santa Monica.

Q. Held when?

A. Held in January, January 11, 1944, in the office of Local 33 in San Pedro.

Q. When you say in the office of Local 33 in San Pedro, is that the same headquarters that was being used by Local 36 at that time? A. Yes.

Q. But the headquarters belonged to Local 33, is that right? A. Local 33; yes.

Mr. Margolis: Now I think perhaps at this time, your Honor, I will offer this document. There is certain additional testimony that can only be explained after this document is in. [2491]

* * *

The Court: I don't think it is admissible for a general purpose. I think it might be admissible for the special and limited purpose of going to the question of whether or not this organization, Local 36, was a marketing organization.

(Testimony of Jeff Kibre.)

Mr. Margolis: That is precisely what we have in mind when we say the type of organization it is.

The Court: The objection will be overruled and the document will be admitted for that limited and sole purpose, to be considered by the jury in that respect only.

(The document referred to was received in evidence and marked Defendants' Exhibit L.)

Mr. Margolis: I would like at this time, your Honor please, to read portions of this exhibit which will, of course, be available to the jury in its entirety. [2493]

* * *

(The jury returned to the courtroom at 10:05 o'clock a.m.)

* * *

Mr. Margolis: Yes, your Honor.

Your Honor please, as I stated before, I request the privilege of temporarily withdrawing Mr. Kibre from the stand to put on witnesses out of order who are under subpoena for this morning.

The Court: Very well.

* * *

ALEXANDER WAISSBORD

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows: [2500]

* * *

Direct Examination

By Mr. Margolis:

Q. Mr. Waissbord, you are connected with the Pacific California Fish Co., Inc., is that right?

A. That is right.

Q. In what capacity?

A. I am president of this company.

Q. That is a corporation?

A. A corporation.

Q. Are you also the manager of the company?

A. No.

Q. Do you work with the company?

A. Oh, yes.

Q. Are you familiar with the books and records of that company?

A. Yes.

Q. Do you keep those books and records and supervise them?

A. Yes.

Q. What kind of a business is the Pacific California Fish Co., Inc., engaged in?

A. It is fresh fish business.

Q. Wholesale or retail?

A. Wholesale. [2501]

Q. Where is your place of business located?

A. 512 Stanford Avenue.

Q. Los Angeles, California?

A. Los Angeles, California.

(Testimony of Alexander Waissbord.)

Q. Do you purchase fish from other dealers?

A. Yes.

Q. Among those other dealers are dealers located on the wharfside or along the shore in the Southern California area from Morro Bay south?

A. That is right.

Q. In addition do you purchase fish from other sources?

A. That is right.

Q. You were served, were you not, with a subpoena which requested you either to bring in your books showing for the years 1945 and 1946, in terms of pounds and dollars, all of the fish purchased by you from landings at ports in Southern California from Morro Bay south, and of fish purchased by you during that period from all other sources, or in lieu of that a month by month summary giving that information, isn't that right?

A. That is right.

Q. Pursuant to that have you prepared from your books certain information?

A. We prepared it, but I don't think this is exactly month by month. [2502]

Q. It is not month by month, but you prepared it on a year by year basis, is that correct?

A. Yes.

Q. I will ask you—

Mr. Margolis: Perhaps we had better have this document marked for identification first.

The Clerk: M.

(The document referred to was marked Defendants' Exhibit M for identification.)

(Testimony of Alexander Waissbord.)

Q. (By Mr. Margolis): I show you this document which has been marked M; is it a document which was prepared by you or under your supervision? A. By my bookkeeper.

Q. Did you direct your bookkeeper what to do?

A. Yes.

Q. And do you know from what information or what records that you have the information that is contained in Defendants' Exhibit M, for identification, was obtained? A. Yes.

Q. What records? A. Books.

Q. Your books showing purchases?

A. Yes.

Q. In other words, you are showing here in terms of [2503] dollars and pounds—

A. It is very hard to tell the pounds.

Q. To the extent that you are able to do so you are doing so in terms of dollars and pounds?

A. Yes.

* * *

Q. I think on this I would try some leading questions. If counsel objects, why, I will change my method.

Is it true that this exhibit contains information partially in terms of dollars on fish that you received and partially in terms of pounds?

A. Yes, but I don't think that the poundage is correct, because it is very hard to make it.

Q. You don't think it is correct? A. Yes.

Q. What do you mean by saying you don't think it is correct?

(Testimony of Alexander Waissbord.)

A. The amount is absolutely correct, but the poundage—because according to the books you have not in the books the poundage, you must in one day pick all the bills to find the poundage, it is not possible.

Q. If I understand you correctly, in other words, you state that the amount in dollars is absolutely accurate. [2504] A. Yes.

Q. But the amount in pounds is subject to error?

A. Yes.

The Court: The poundage is estimated, is it?

The Witness: Estimated, yes, that is right.

Q. (By Mr. Margolis): On top you have the first item "Total Purchases for Year 1946, 659,-805.31." Is that supposed to be dollars?

A. That is dollars. No. This is poundage.

Q. This item right here (indicating).

A. That's right.

Q. In other words, does that mean that your total purchases from all sources of fresh fish for the year 1946 was \$659,805.31?

A. That is right.

Q. Then immediately below that you have got approximately 10 per cent from Morro Bay south.

A. That is right.

Q. And the item \$65,050.01.

A. That is right.

Q. That indicates your total purchases during the year 1946—

A. From Morro Bay and south.

Q. South—

(Testimony of Alexander Waissbord.)

A. Through San Diego. [2505]

Q. Including San Diego?

A. Yes, including San Diego.

Q. Below that you have a list of names starting with Max Stevenson and then pounds opposite that, and then dollars, and then the total equalling \$65,-050.01, the same amount as the total set up above, is that right? A. Yes.

Mr. Rubin: Just a moment, Mr. Waissbord.

If your Honor please, this line of questioning is objected to. I don't see the materiality of this at all. The indictment charges a conspiracy in restraint of trade with respect to fish that was purchased by the dealers from the fishermen. This gentleman is one step removed. There is no question but what these dealers sold fish to other people, and there is no question but what other people bought fish, but I can't see how this line of testimony is material at all to the issue in this case in the slightest.

The Court: Counsel in his opening statement indicated that one of the items of defense on which they would rely, while he didn't couch it in those terms, was the amount of fish caught was trivial compared to the amount consumed in this area. If I understood him, that is what he intended to say.

Was it, Mr. Andersen?

Mr. Andersen: Yes. [2506]

Mr. Margolis: Was not substantial.

The Court: Was not substantial. I take it this goes to the defendants' position that the amount of

(Testimony of Alexander Waissbord.)

fish caught here by the fresh fish fishermen is not substantial, and that most of the fish that is consumed in this area comes from other areas and thus there couldn't be any restraint of trade. [2507]

* * *

Mr. Rubin: This might go in subject to a motion to strike and after the jury retires we might re-argue it.

The Court: I think so.

Mr. Rubin: Then may this evidence go in subject to our motion to strike?

The Court: It may go in over your objection on the ground that it is immaterial, which is overruled, without prejudice, however, to a motion to strike it.

Mr. Rubin: Very well.

The Court: And all of the testimony which the defendants offer in that connection, that is, in support of their proposition that I have indicated here, that the majority of fish comes from elsewhere and that the amount of fresh fish is not [2508] substantial would be subject to your same objection and subject to the same ruling.

Mr. Rubin: Yes, your Honor. Thank you.

Q. (By Mr. Margolis): Mr. Waissbord, I think I will restate the last question.

The Court: Pardon me, counsel. If I may see that document I may be better able to rule on it.

(The document referred to was passed to the Court.)

Q. (By Mr. Margolis): Immediately below the first two items which I read you have a list of names,

(Testimony of Alexander Waissbord.)

Max Stevenson, Castagnola Brothers, are those the companies located south of Morro Bay in California from whom you buy fish? A. That is right.

Q. And you have itemized it according to what you bought from each company for the year 1946 and the total is \$65,050.01, to which I have previously referred? A. That is right.

Q. Now you also have total purchases for 1945, \$296,242.71? A. Yes.

Q. Approximately 10 per cent from Morro Bay south, or \$29,014.20? A. That is right. [2509]

Q. And the information was obtained in the same way? A. That is right.

Q. And the dealers are the same dealers referred to previously? A. Yes.

Mr. Margolis: I will offer Defendants' Exhibit M for identification in evidence.

Mr. Rubin: Subject to our objection.

The Court: It will be marked for identification. I will not rule on it at this time. [2510]

* * *

Mr. Margolis: You may cross-examine.

Cross-Examination

By Mr. Dixon:

Q. Mr. Waissbord, in making up this compilation, Exhibit M for identification, I notice that you refer to the poundage of fish bought from certain companies named thereon. Did you examine your books to determine what types of fish or what kind

(Testimony of Alexander Waissbord.)

of fish was included in these poundage figures contained opposite the name of the concern from whom you say [2511] you purchased the fish?

A. No.

Q. You did not?

A. No, there was no time. It was only one day's time and was not possible.

* * *

Q. Now I take it you purchased all types of fresh fish, is that right?

A. That is right.

Q. And you purchase a good portion of it from outside the State of California?

A. That is right.

The Court: Do you specialize in that type of fish?

The Witness: Yes; we have fresh fish.

The Court: I mean, do you specialize in fish that is caught out of California?

The Witness: Yes.

Q. (By Mr. Dixon): Can you tell the jury what types of fish you buy outside of the State of California that is included in the total amount of your purchases during the year?

A. Certainly. Salmon, halibut, black cod, ling cod, [2512] shrimps, crab meat—I think that is all. Oysters.

Q. Are those the same type of fish or class of fish that you buy from the companies that are named here on your Exhibit M?

A. No, it is different.

(Testimony of Alexander Waissbord.)

Q. They are different? A. Yes.

Mr. Dixon: That is all.

Mr. Margolis: Just one question.

Redirect Examination

By Mr Margolis:

Q. You said that you specialize in types of fish that are not caught in the Southern California area?

A. That is right.

Q. Do you know whether your position with regard to that specialization is any different from all of the other fish dealers in this area?

A. No, I don't think so.

Mr. Margolis: That is all.

* * *

MRS. HAZEL V. MARRY

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Margolis:

Q. I wonder if you would mind stating your name again? A. Mrs. Marry; M-a-r-r-y.

Q. And you are connected with what company?

A. Holly Seafood Company.

Q. In what capacity?

A. Well, I do all the book work, and I am also a partner. My husband and I own the business.

(Testimony of Mrs. Hazel V. Marry.)

Q. You are a partner and in charge of the books, is that right? A. Yes.

Q. Where is that company located? [2514]

A. 414 Stanford Avenue.

Q. In Los Angeles? A. In Los Angeles.

Q. What type of business is your company engaged in?

A. It is wholesale seafood, both frozen and fresh.

Q. From what sources do you purchase fish?

A. All over the country, from Boston, from Seattle, from any place in the country, I guess, and in Mexico as well.

Q. Do you also purchase fish that is landed at various points from Morro Bay south in California?

A. Yes, through other houses. We don't purchase direct from the fishermen.

Q. You purchase from dealers who are located on the shore? A. That is correct.

Q. And who in turn sell to you, is that right?

A. Yes.

Q. Now you were served, were you not, with a subpoena which requested you either to bring in all of your books and records for the years 1945 and 1946 showing the amount of purchases by you in terms of pounds and dollars, (a) fish landed in ports in Southern California from Morro Bay south, and (b) fish from all other places and sources, or in lieu of your books a month by month summary of that information? A. Yes, sir. [2515]

Q. Have you brought in either of those?

(Testimony of Mrs. Hazel V. Marry.)

A. I have a dollars and cents purchases in total, but not with just the Morro Bay separate, I mean from there on south. It is impossible to get that in one day's time, and I had the notice yesterday after 11:00 o'clock and I couldn't possibly get that out of the records. This is the total purchases of every kind of fish for the two years.

The Court: That will be marked N for identification.

Mr. Margolis: It isn't what we asked for and doesn't particularly show anything as far as we are concerned.

(The document referred to was marked Defendant's Exhibit N for identification.)

Q. (By Mr. Margolis): This shows all of your purchases of fish for the years 1945 and 1946 on a month to month basis, whether purchased from the Southern California area that I have referred to or from any other source, is that correct?

A. Correct. I had insufficient time to get any breakdown of the local.

Mr. Rubin: If your Honor please, before the witness is examined with respect to the contents of the document, and in connection with our running objection, may I suggest that the document possibly be offered, and then the document of course will speak for itself. If it is stricken it won't be necessary to have any testimony from it before the jury. In other words, if there is simply going to be testimony of what is contained in the document, the document is self-explanatory.

(Testimony of Mrs. Hazel V. Marry.)

Mr. Kenny: We haven't seen these documents until the witnesses bring them in, and we at least need an explanation even if the government thinks the jury doesn't.

The Court: This document is almost self-explanatory.

How long have you been the bookkeeper down there, active in the business?

The Witness: Twenty some years.

The Court: Are you able to tell, without making a detailed examination of your books—this is all subject to your objection, but I have in mind saving the witness' time, [2517] as well as everybody else's, possibly—are you able to tell from your experience down there what percentage of your business consists of fresh fish bought from local dealers?

The Witness: I wouldn't be in a position to state that for the simple reason that I never have checked it, and I wouldn't want to give a false statement.

The Court: You never have checked?

The Witness: I never have checked to find what percentage was local and what was nation-wide.

The Court: I mean outside of the dealers from Morro Bay south.

The Witness: I never have made a check on it.

Q. (By Mr. Margolis): You have no idea at all?

A. No conception at all of it. I wouldn't know, because a comparison with the total fish, I imagine it would run rather small, I don't know. We do

(Testimony of Mrs. Hazel V. Marry.)

use an awful lot of local fish and always have, because we specialize in fresh fish and we try to get the freshest fish we can, and naturally the local fish is the freshest.

Q. And you use a lot of that, but it is still small in comparison with the total, is that right?

A. I would imagine it would be. I can't definitely state.

Mr. Margolis: I think, your Honor, I would like to [2518] save the witness as much trouble, too, as possible, but I doubt whether this testimony——

The Court: It doesn't prove anything about anything.

Mr. Margolis: That is right.

The Witness: I being alone and only having one other help I couldn't go back and get all of that.

Q. (By Mr. Margolis): It would be available for somebody to check it?

A. If you wish it.

Mr. Margolis: Thank you very much.

I offer Defendants' Exhibit N.

The Court: It will be marked for identification, and I will reserve ruling on it.

(The document referred to was marked Defendants' Exhibit N for identification.)

Mr. Margolis: You may cross examine.

Mr. Dixon: No cross examination.

Mr. Margolis: May I ask your Honor with the understanding that we are going to be permitted to examine the books that the witness be excused

(Testimony of Mrs. Hazel V. Marry.)

to be returned later at the request of counsel if it is necessary to lay a further foundation as to the sources which were used?

The Court: That is up to the witness. She can either bring her books up here, or if you desire she can herself gather the data, or she can permit someone else to gather the [2519] data, but I do not wish to make any witness be under compulsion of letting somebody go in and have free access to all their books.

Mr. Margolis: Our position is simply this: We are perfectly willing to have the witness prepare the data. However, if the witness desires it, and if it will be in the convenience of the company, we are willing to do the work. In other words, as I understood what the witness stated, she would prefer that method of having it handled. If that is not so, we certainly haven't the slightest desire to look at the books; not the slightest.

The Witness: Well, I do not myself have time to prepare any such statement as that, because it means going through every invoice for two solid years to pick up that information.

Mr. Margolis: Then you would prefer if someone would do it?

The Witness: It would have to be done that way. If you need the information it would have to be done in that way.

The Court: There isn't any other way to do it?

The Witness: No, there isn't.

(Testimony of Mrs. Hazel V. Marry.)

The Court: Do you think your husband would have some notion?

The Witness: Whether he wants somebody to come down and [2520] go through the books?

The Court: No. About what percentage of your fish is bought here.

The Witness: I never checked it.

The Court: Does he do the buying?

The Witness: Yes.

The Court: Maybe he can do it. He has been in the same business the same length of time you have?

The Witness: Yes, 20 or 21 years.

The Court: Maybe a year longer?

The Witness: Maybe so. A long time, anyway.

Mr. Margolis: Suppose we leave it this way, your Honor: The witness is subject to return and we will try to work it out to get the evidence on the basis of an estimate if we can, and if we can't, —through some other means.

The Court: Do you now know what counsel desires?

The Witness: Yes, I understand what they desire.

The Court: The percentage of fish in your business in dollars——

The Witness: That is locally caught.

The Court: Yes, that is locally caught. If your husband can give an estimate that is approximately reliable, why, he can return and I will permit him to be put on out of order so he won't need to take

(Testimony of Mrs. Hazel V. Marry.)

the time from his business. Unless he enjoys it up here. All right. You may be [2521] excused on that condition.

Mr. Rubin: If your Honor please, just before——

The Court: Did you have cross examination?

Mr. Rubin: No cross examination, except that assuming your Honor rules ultimately that the evidence is material, then we would like to call your Honor's attention to this fact: that the purchases by a secondary receiver, by a wholesaler, in other words, a purchaser——

The Court: You can argue that later.

Mr. Rubin: The dollar value would certainly be immaterial. If there is going to be any common denominator here it should be in pounds. The purchase price of the secondary receiver would have no bearing on the amount of fish that came in.

Mr. Margolis: We want as complete information as we can get into this record. It may be if we can get it in pounds we are going to get it in pounds, and if we can't, we will get it in dollars. If the government can get it in pounds and feels they can, they are welcome to do so.

The Court: The lady is excused.

You have another fish dealer here?

Mr. Margolis: Yes.

BRIGHAM GRASTIED

called as a witness by and in behalf of the defendants, having been first duly sworn, was examined and testified as [252] follows:

* * *

Direct Examination

By Mr. Margolis:

Q. Mr. Grastied, I think it is fair to assume that you are from the Grastied Wholesale Fish Company.

A. That's right, sir.

Q. What is your connection with that company?

A. I am manager of the company.

Q. As such do you have supervision of the books and records of the company?

A. I do, sir.

Q. Where is that company located?

A. 1308 East First Street; 1308 and -10 East First Street.

Q. Is that Los Angeles?

A. That is Los Angeles.

Q. What is the nature of the business in which you are engaged?

A. We are engaged in the wholesale fish, including fresh water and seafoods, distributors. [2523]

Q. Is that fresh fish or canned fish?

A. Fresh water fish. We are a little different, probably, than some of the others, inasmuch as we have in our company fishing outfits that engage in fresh water fishing in little lakes and reservoirs for rough fish, it is called rough fish under the State Department Wild Life.

(Testimony of Brigham Grastied.)

Q. From what sources do you obtain—you are in the wholesale business, is that right?

A. That is right, sir.

Q. From what sources do you obtain the fish which you handle?

A. Better than 50 per cent of the fish that we handle are of our own catch, that is including carp, suckers, hardheads and such items that are termed rough fish in the lakes and reservoirs of California.

Q. Those are not caught in the ocean at all?

A. No. Those are in little lakes. The other 50 per cent of our fish only as of '46—prior to that time before I came down dad handled only his own merchandise, and '45 we handled no coast fish of any kind or description, but upon my entering into the business and assuming that operation I included with ours coast fish and have purchased up and down the coast since '46 such items that my business calls for.

Q. You were served with a subpoena asking that either you bring in your books and records containing certain [2524] information or a summary of that information, that information being the amount of your purchases for the years 1945 and 1946 in terms of dollars and pounds on a monthly basis, first of fish landed at Southern California ports from Morro Bay south and, second, of all other fish purchased by you, is that right?

A. That's right, sir.

Q. Have you brought in either your books or a summary?

(Testimony of Brigham Grastied.)

A. We pay and receive by invoice only. We do not keep a record, an individual record of account purchase of any of our wholesalers. We pay and receive by invoice. Those invoices I have that are in question from Morro Bay south, indicating the amount, species, price that was paid for them as the invoice was billed to us by the vendor, and the notation on there as to check number and date and amount that was paid, and I have a complete check record of 1946 of all the payments that were made for purchase of fish.

Q. Do I understand you to say that the invoices which you brought are limited to the invoices of fish landed at Morro Bay south? A. Yes, sir.

Q. How about the rest of your invoices?

A. I have that all in folders, and it would necessitate probably bringing the pick-up to bring them over, because this is just a very small amount of the fish that was [2525] purchased that my company uses, and as I say I don't have a record of that, and it would necessitate more than a day's time in getting that. My auditor was not in a position to compile that.

Q. Maybe we can get at this without the necessity of compilation if you can give us fairly reliable estimates. First of all, can you give us a pretty close figure as to the amount of fish in dollars and in pounds which you purchased during the year 1945? A. None. [2526]

Q. Can you give us that information for the year—

(Testimony of Brigham Grastied.)

A. I have purchased no fish in 1945.

Q. I see.

The Court: They sold their own fish?

The Witness: Sold our own exclusively; no coast fish of any kind.

Q. (By Mr. Margolis): Can you give us an approximation of the number of pounds of fish handled by you, your own fish?

The Court: In 1945?

Mr. Margolis: Yes.

Mr. Rubin: That is objected to as immaterial. It is fresh water fish and has no bearing on this case, all carp and sucker that they catch in lakes and rivers. He stated during 1945 they bought no ocean fish at all.

Mr. Margolis: Fish is fish.

Mr. Rubin: If the Court please, the restraint of trade here is the price of fish for fish caught in the area described in the indictment, which is the territorial waters off the coast of California and Mexico. It has no relationship at all to suckers or bass or goldfish. That has no materiality or bearing on this case at all.

Mr. Margolis: The Government has changed its position pretty considerably. It emphasizes with a great deal of emphasis in the opening statement that there was 19 or 20 [2527] million pounds of fish caught in this area and that about a million pounds came in. That was the opening statement of the Government.

The Court: The objection is overruled.

(Testimony of Brigham Grastied.)

The Witness: I can only say as here that our total sales for that year were about \$62,000 of that type of fish.

As to tonnage, I am rather at a loss except to say that that type of fish sold at an average of about 10 cents a pound.

The Court: That is retail?

The Witness: That is as we sold it out, your Honor.

The Court: You sell it to dealers?

The Witness: That is right, to other dealers.

The Court: And retail too?

The Witness: And retail establishments too.

Q. (By Mr. Margolis): So 620,000 pounds would be approximately an estimate of the fish handled by you in 1945? A. That is right.

Q. Now I wonder if you could give us the same information for the year 1946?

A. In 1946 our sales were about \$130,000, and with that we have increased considerable on the coast fish. Our carp fell off somewhat. The tonnage was less on that. As to dollars and cents, the prices that prevailed during 1946 were [2528] rather high in some items and detailed considerable amount of money, but the poundage was small.

I am not in a position at the present time, nor would I be within a few days' time, to compile any such record that would give me a tonnage as to my volume of fish.

Q. Do you have any basis for making an estimate of the average price as you did in 1945,

(Testimony of Brigham Grastied.)

whether it would be about 15 cents or perhaps the maximum range?

A. I would say our price for 1946, including our own merchandise, would run between 15 cents to 17 cents.

Q. And you said there was——

A. \$132,000, which of course is all from memory. Books are available to substantiate any figures that I give, being corrected of course.

Q. As I figure it, that would be somewhere in the neighborhood of 800,000 pounds, would that be about right?

A. That is about right.

Q. Now of that fish which you handled in 1946, could you give us any idea of what percentage was fish landed at points from Morro Bay south?

A. I would say of my purchases for coast fish that those points were less than 10 per cent of my entire purchases.

Q. Of coast fish?

A. That is right.

Q. So there would be still less—— [2529]

A. It would be still less of our entire business.

Q. Would you say it would be about in the neighborhood of 5 per cent?

A. I would say that that would be about the maximum. [2530]

* * *

Cross Examination

By Mr. Dixon:

Q. Mr. Grastied, do you buy any fish direct from the fishermen?

A. No, sir.

(Testimony of Brigham Grastied.)

Q. This type of fish that you suggested you bought from companies in this area?

A. Primarily wholesalers.

Q. Is that fish the same kind that you testified you caught yourself in your own business?

A. No, sir.

Mr. Dixon: That is all. [2531]

* * *

JEFF KIBRE

resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Margolis:

Q. Mr. Kibre, directing your attention to Defendants' Exhibit L, which appears to be a set of minutes for the Southern California small boat price conference for January 11, 1944, that is what they are, are they not?

A. Yes, that is the minutes of a conference which I called at that time.

Q. And you were present at the conference as appears from the face of the exhibit, is that correct?

A. That is right. [2532]

* * *

Q. (By Mr. Margolis): I want to direct your attention to the portion of the minutes previously referred to reading as follows:

Mr. Dixon: Let us interrupt a moment and see if we can get this document.

(Testimony of Jeff Kibre.)

“Brother Kibre explained that the meeting had been called in line with the program to work out a coastwise schedule of minimum prices on fresh fish and cannery fish caught by non-purse seine gear. Similar meeting were to be held in the various areas along the coast. The proposals from each area were then to be combined into a coastwise program. This program was laid down at the recent convention and was designed to unite all fishermen behind a single program. Then behind such united action we can establish a solid foundation for uniform prices, conditions and quality records.”

* * *

Q. Now limiting it for the present then to the paragraph which I have read, will you state whether the portion that I have read to you represents the total of what you said on that subject at that time or whether it was a summary?

A. After examining it, I can assure you that it does not represent all that I said.

Q. I wonder if you would state then the substance of your statements that you made in connection with that?

Mr. Dixon: If the Court please, we regard this as immaterial for the reason that, as we understand it, the purpose for which this document was admitted, for whatever value it might have, was to indicate the activities of this [2534] particular organization, and I think now that the question is as to what further was said by Mr. Kibre, that that would be immaterial from the point of view of this document.

(Testimony of Jeff Kibre.)

The Court: I think so. Objection sustained.

Mr. Margolis: If your Honor please, what further was said is going to indicate and explain in addition the activities. That is just a summary of the activities that were being talked about at that time.

The Court: The objection is sustained, counsel. Proceed.

Mr. Margolis: Maybe I can get at it another way, your Honor.

Q. Now in that paragraph there is a reference to a program to work out a schedule of prices. Now will you tell us what you said with reference to that program? A. Yes.

Mr. Rubin: Just a moment, Mr. Kibre.

There is another ground for objection to this type of examination, and that is even with respect to corporation minutes that are admitted for the purpose that this has been admitted, this is a document and is no less subject to the parol evidence than any other document. The rule is simply that they can explain an ambiguity, but a document which is apparent on its face and is self-explanatory and is as clear as this document is, we submit is not the subject of [2535] amplification.

The Court: Are you objecting to the question?

Mr. Rubin: We object, your Honor.

The Court: Objection sustained.

Mr. Margolis: On the ground stated, your Honor?

(Testimony of Jeff Kibre.)

The Court: On that ground, and on the further ground that it is immaterial, and on the further ground that it is self-serving.

Mr Margolis: I would like to submit authorities on that point.

The Court: I have made my ruling, counsel.

Mr. Margolis: This witness has said that these minutes do not represent everything that was said.

The Court: The objection is sustained. Proceed, counsel.

Q. (By Mr. Margolis): There is also some reference here to a coastwise program. Will you tell us what you said about the coastwise program?

Mr. Rubin: Same objection, your Honor.

The Court: Same ruling.

Q. (By Mr. Margolis): Turning to page 2, Exhibit L, under point 3, barracuda, appears the following: "It was pointed out that the 1942 price, the base generally used by the OPA——"

The Court: Counsel, is your intention to ask the same [2536] type of questions on which I have just ruled?

Mr. Margolis: Yes, the same type of question, but here I think there is greater ambiguity. Yes, I intend to ask the same type of questions, your Honor.

The Court: I think, counsel, that I have indicated my ruling on the matter and it would not be proper for you to persist in asking the same type of questions when you know it is going to be subject to the same ruling and the same objection.

(Testimony of Jeff Kibre.)

Mr. Margolis: The point is, it is not presenting anything to the jury that isn't already in evidence. This is in evidence and could be read to them.

The Court: I have made my ruling, counsel. You can read it to the jury.

Mr. Margolis: Do I understand, your Honor, that I cannot ask for an explanation of any item or for further details with regard to any item that appears in these minutes, is that the situation?

The Court: I have made my ruling on the questions that have been asked. If you maintain that there is some ambiguity there, if you will let me read the minutes and call my attention to them, then I will make my ruling on it.

Mr. Margolis: For example, I maintain that when it refers to a coastwise program and doesn't explain what that coastwise program is, that there is an ambiguity, there is [2537] something left to be explained.

The Court: Counsel, I must warn you that I have made my ruling and I do not think you should persist. You have had enough experience to know that you should not do that.

Mr. Margolis: I contend, your Honor, that there are ambiguities in every part of these minutes and I merely intend to ask these questions so that your Honor can rule. I don't know how your Honor can rule if I don't ask the questions.

The Court: You maintain that there is ambiguity there?

(Testimony of Jeff Kibre.)

Mr. Margolis: Yes, I maintain there is ambiguity in every part of these minutes.

The Court: Will you point out to my attention the particular portions you refer to?

Mr. Margolis: I intend to ask questions with regard to all of points 3 and 4.

(The document referred to was passed to the the Court.)

The Court: I do not think the question would be material. Moreover, I think the testimony of this witness would be purely self-serving.

Proceed.

Mr. Margolis: May I have those minutes, your Honor? I want to lay the foundation for an offer of proof.

Q. With regard to points 3 and 4, referring to barracuda and rockfish, on Defendants' Exhibit L, do those points set forth completely everything that was said? [2538]

A. Point 3 does not set forth everything that was said, and in fact——

Mr. Rubin: Just a moment. If your Honor please, the witness has answered the question.

Mr. Margolis: I think he should be allowed to complete his answer.

The Court: I do not think so, counsel. You are trying to do just what you said you would do in an aside when you walked in front of the jury box a moment ago, that maybe you can get it in another way. Now the objection has been sustained, counsel.

(Testimony of Jeff Kibre.)

Mr. Margolis: I am laying a foundation for the offer of proof.

The Court: I understand. The witness answered that question when he said no.

Q. (By Mr. Margolis): Is the same thing true with regard to item 4, rockfish? A. Yes.

Q. Is the same thing true with regard to every portion of these minutes?

A. Every portion that I have examined up to there, and the first page, and up to there, it certainly is. (Indicating.)

Q. Will you look at the rest of the minutes?

A. This Section 5 on halibut is true also.

Q. Just look at the rest of it, and instead of telling us section by section if it is true as to all so state.

A. Yes, I certainly agree that it is true that the entire document is in fact. [2540]

* * *

(The following proceedings were had in the absence of the jury):

Mr. Margolis: Your Honor, on the question of the admissibility of these documents, we would like to have the matter determined as soon as possible, because it involves the question of bringing in some additional witnesses, maybe half a dozen additional witnesses, four or five anyway, some of whom haven't responded to subpoenas, and we want to know——

The Court: That is the document Exhibit M?

Mr. Margolis: There is Exhibit M and Exhibit N, your Honor. There are two.

(Argument and discussion of counsel reported but not transcribed.)

The Court: I have just finished reading the indictment.

I am satisfied the government's position is well taken, and the objection to the introduction of Exhibits M and N will be sustained.

Mr. Rubin: At this time we renew our motion to strike all of the evidence adduced by the witnesses and ask that the jury be instructed to disregard it.

The Court: I think the latter witness' testimony could be stricken, because I don't think she testified to anything. And the first witness, Waissbord, —we don't have Exhibit M here, do we? He didn't break it down into months. [2541]

Mr. Kenny: That is right. His figures were——

The Court: Only annually, and divided into the dealers from whom he bought fish. He is going to return with the monthly sales. I think the monthly poundage of fish which he bought coming from the fresh fish dealers in the area described in the indictment would be material and would be admissible, but none of that testimony is presently in the record, therefore I will have to strike all of his testimony.

Call the jury down.

Mr. Margolis: I understand, your Honor——

The Court: Just hold the jury back. In other words, the testimony of the Los Angeles fish dealers of the nature which you adduced this morning is not in my judgment admissible, and any testimony on the point, that is, that the total amount of fish was so much and the total fish caught down here bore a certain relationship or percentage to the total fish is not in my judgment admissible or competent in this case.

Mr. Margolis: If your Honor please, ordinarily in order to make an appropriate offer of proof it is necessary to call a witness, swear that witness, and ask him the question and have an objection sustained. Shall we go through that process?

The Court: No. Counsel, I think in connection with that matter it would be wise and better for the record if you should reduce your offer to proof to writing. [2542]

Mr. Margolis: My point is this: Will there be a stipulation that that offer of proof may be made as to each of the witnesses upon whom we rely as if they had been called to the stand?

The Court: If you will designate your witness: So-and-so if called would testify as follows:

Mr. Margolis: We can find out the name, but it would be a representative of each one of these companies. We didn't know the names of the people who were coming in today.

The Court: I understand that. So if you will have your written offer of proof, get that ready over the weekend, then we can take it item by item and pass upon it as you present it, and I will have

one before me, because it is too difficult—it is placing too much of a burden upon you to remember orally to make your offer of proof, and too much of a burden upon me to remember orally the different items which you have presented.

* * *

(The jury returned to the court room)

* * *

The Court: Just before the recess—not [2543] just before the recess, but there was a witness here, Mr. Waissbord, and a Mrs. Marry, and Exhibit M, for identification, and Exhibit N, for identification: Exhibit M for identification, and N for identification, the objection to them is sustained. The motion of the government to strike the testimony, all of the testimony of the witness Waissbord and all of the testimony of the witness Mrs. Marry, is granted. Their testimony is stricken from the record and you will disregard it.

Mr. Rubin: Does that refer to the witness Grastied also, if your Honor please?

The Court: And Grastied, also. The same ruling as to the witness Grastied, although he produced no exhibits in connection with his testimony.

* * *

Mr. Margolis: I wish at this time to read a portion of Exhibit L. That is a defendants' exhibit which has been referred to previously, being the minutes of the Southern California Small Boat Price Conference of January 11, 1944. The entire minutes, of course, will be available to the jury.

* * *

JEFF KIBRE

recalled as a witness by and in behalf of the defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Resumed)

By Mr. Margolis:

Q. Were certain cannery experiments on barracuda conducted during the year 1943, the year before this small boat price conference?

Mr. Rubin: I will do it, your Honor. I will make the objection so we might go to lunch. It is objected to on the ground that it is incompetent, irrelevant and immaterial. [2547]

* * *

The Court: The objection is sustained. [2548]

* * *

The Court: Call the jury down.

The Clerk: I believe we have an ex parte matter, your Honor.

Mr. Shallenberger: In a way it is, your Honor. Several of my clients, the fish dealers on the wharf in San Pedro and two from Newport Beach, have been served with subpoenas duces tecum to produce certain records at 2:00 o'clock this afternoon. At this time, representing those parties who are not parties to this action, I would like, under Rule 17(c) to make a motion at this time to quash the subpoenas duces tecum in their entirety. And I do so move, on the grounds that it is an unreasonable invasion of their right of privacy and their

business, and that the matters that are requested by said subpoenas are immaterial and irrelevant as far as the issues of this case are concerned.

(Here followed argument by counsel which was reported but not transcribed.)

The Court: I will put over this motion to quash until Friday morning at 10:00 o'clock. The persons who are here in response to the subpoena will be excused until further order of the court, if they will agree upon receiving a call from Mr. Shallenberger to respond.

Is there anyone here who does not understand that, that [2549] if you are excused this afternoon it will be necessary for you to return upon order of the court, which will be communicated to you through Mr. Shallenberger? (No response.)

(Here followed further proceedings which were reported but not transcribed.)

Mr. Margolis: If your Honor please, there is one witness here who is not represented, at least one, there may be others, by Mr. Shallenberger.

The Court: What is your name?

Mr. Martin: Bruce Martin.

The Court: And the name of your company?

Mr. Martin: Commercial Fishermen's Cooperative Association.

Mr. Margolis: We are perfectly agreeable, your Honor, to having it deemed that the same motion be made on behalf of Mr. Martin and the same ruling.

The Court: Very well. You will be excused subject to the same order.

Mr. Martin, do you wish to have the same motion made apply to you?

Mr. Martin: That is correct, sir.

The Court: Very well.

The Court will also take note of the fact that the witnesses appeared here with large boxes and suitcases. I do not know what they contained but I presume they contained [2550] records.

Very well. Call the jury down.

(The jury returned to the courtroom at 2:30 o'clock p.m.) [2551]

* * *

JEFF KIBRE

the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Direct Examination

(Resumed)

By Mr. Margolis:

Q. In the year 1944 were there certain contracts covering the manner of purchasing fish on the part of the Santa Monica dealers entered into?

A. Yes.

Q. Were there negotiations which preceded the execution of those agreements?

A. There were.

Q. When did those negotiations begin?

A. Those negotiations began early in 1944 and proceeded until about July when the contracts were signed. [2552]

* * *

(Testimony of Jeff Kibre.)

The Court: Were they between companies or between the union and the company?

* * *

A. The union and fish companies.

The Court: Local 36?

The Witness: That is correct.

Q. (By Mr. Margolis): And what companies?

A. The Santa Monica Seafood Company, located on the Municipal Wharf at Santa Monica, and the Bay Fish Company, located on the Municipal Wharf at Santa Monica. I think the other one is the Bay Fish Company.

Q. You said there were negotiations between Local 36 and these two companies preceding the execution of these agreements.

A. Lengthy negotiations.

Q. Did you participate on behalf of Local 36 in those negotiations?

A. Yes, I was requested by the Santa Monica unit of Local 36 to participate in those negotiations on their behalf.

Q. Do you remember approximately when the first negotiation meeting was conducted?

A. I would say to the best of my recollection that we began negotiations around April of 1944, possibly earlier. I know that it was several months before the conclusion of the discussions.

Q. Do you remember who was present during the course of those negotiations? [2553]

A. We had a great many meetings with Mr. DiLucca from the Santa Monica Seafood Company,

(Testimony of Jeff Kibre.)

and we also had meetings with Mr. Poppinghorn from the other company, Bay Fish Company. There were also present members of the Santa Monica unit of Local 36. Mr. McKittrick was present on several occasions; myself, of course.

Q. Where did those meetings take place?

A. Most of the meetings took place right down at the wharf at Santa Monica.

Q. The place of business of the respective dealers?

A. The places of business. I think we also had a meeting, if I recall correctly, at the home of Mr. DiLucca one night; and I think, also, we had a meeting at the office of our attorneys, that is, your own office here in Los Angeles.

Q. Do you recall the matters that were taken up during those negotiations? A. Yes, I do.

Q. What were the subjects that were discussed?

A. There were three—as I recall, there were three main questions that formed the subject of the negotiations. First the settlement of actions brought against both dealers for short weight to the fishermen over a considerable period of time at Santa Monica. Secondly, the matter of installing modern weighing facilities to weigh fish which would be [2554] satisfactory to the Bureau of Weights and Measures which had investigated both companies and which had filed criminal actions against both companies. And, thirdly, the matter of a contract covering the price of mackerel to be

(Testimony of Jeff Kibre.)

delivered by the fishermen to each of the companies.

Q. Was a settlement and agreement reached on all of these matters?

A. Yes, a final settlement was made on all three of the matters.

* * *

The Court: You say there was a settlement?

The Witness: That is correct.

The Court: Was it reduced to writing?

The Witness: Yes, the settlement was, as far as I know.

Q. (By Mr. Margolis): Was the entire settlement reduced [2555] to writing?

A. A portion of the settlement was in the form of a contract. The other two issues were settled. One matter, the matter of the weighing, was a matter of installing new devices satisfactory to the Bureau of Weights and Measures. That was done to the satisfaction of the local sealer of weights and measures. [2556]

* * *

Q. Did you, following those contracts in Santa Monica, take any action with regard to obtaining contracts from other fish dealers located in the Southern California area?

A. Yes. At about the same time we attempted and we did—we attempted to enter into negotiations with all other fish dealers in the Southern California area.

Q. Did you at that time send out a letter to the Southern California fish dealers? A. Yes.

(Testimony of Jeff Kibre.)

Mr. Margolis: I will ask that this document be marked as Defendants' Exhibit O.

(The document referred to was marked Defendants' Exhibit O for identification.)

Q. (By Mr. Margolis): I show you a document, a photostatic copy of a document which has been marked Defendants' Exhibit O for identification, which purports to be a copy of a letter on the letterhead of International Fishermen and [2558] Allied Workers of America, dated June 5, 1944, addressed to All Southern California Fish Dealers, and ask you whether that is the letter you just referred to. A. This is. [2559]

Mr. Margolis: At this time we offer Defendants' Exhibit O for identification in evidence.

* * *

The Court: He said this is offered for a limited purpose. Didn't you?

Mr. Margolis: I said it was offered for the purpose of showing the kind of an organization this was through its activity. Not that the statements in there are true, but that this what they were saying and doing at the time. [2560]

The Court: It is immaterial. Objection sustained.

* * *

Q. (By Mr. Margolis): Was any other meeting arranged thereafter with the fish dealers who had not attended the [2569] meeting which had been scheduled for June 10, 1944. A. Yes.

(Testimony of Jeff Kibre.)

Mr. Dixon: May I ask whether he is referring pursuant to this letter or is this a new meeting that he is now asking about?

Mr. Margolis: This is a new meeting. I said "thereafter." We couldn't have it pursuant to this letter if it was thereafter. They didn't show up at that meeting.

Q. Where was the meeting held?

A. At the office of the Western Seafood Institute in Los Angeles.

Q. Do you remember the date? Well, let's say with respect to June 10, 1944, the date on which the meeting was scheduled which didn't materialize.

A. It was shortly thereafter. About, I should judge, about five or six days thereafter or possibly a week.

Q. Might it have been a couple of days thereafter?

A. It might have been just a few days. The meeting on June 10 was on Saturday. I am sure it was some time around the middle of the following week.

Q. Who was present at that meeting?

A. Mr. Woods, the executive secretary of the Western Seafood Institute; a Mr. Lawton who, as I understand it, was the labor advisor of the Western Seafood Institute; Mr. Livingston, of course, from the Conciliation Service; and a [2570] couple of fish dealers; a fairly large committee of about half a dozen, from Local 36.

(Testimony of Jeff Kibre.)

Q. Did you prepare a memorandum concerning that meeting immediately following it?

A. I did. [2571]

* * *

Q. (By Mr. Margolis): To the extent that it is necessary, will you refresh your recollection and answer the questions concerning this meeting?

A. Yes.

Q. Give us everyone who you can remember was present at that meeting.

A. Well, as I said before, myself and a fairly large committee from Local 36, including Mr. McKittrick, Jack Holland from Santa Monica;—if it is all right to refer to this list. [2572]

Q. First give it to us without referring to the list and then you can refer to the list.

A. I recall Maury Maehl from San Pedro, a member of the committee from Local 36, a couple of the boys from San Diego—I think one of them was named Burns, if I recall correctly—and there were several others from the union whose names I certainly don't recall. In fact, I never even knew them in the first place.

Then in addition to that of course there was Mr. Al Woods, Mr. Woods who represented——

Q. You have already mentioned him. Don't repeat those you have mentioned.

A. And Mr. Lawton and Mr. Livingston. I think that was the Conciliation Service.

Q. Can you by looking at the memorandum and refreshing your recollection be more specific as to the persons who were present?

(Testimony of Jeff Kibre.)

A. I didn't get a chance to read this very far down. (Examining document.) There was a Mr. Tyre from your office, as a matter of fact, who was also with us as a legal representative.

The only other thing I could add would be this, that Mr. Woods at the outset of the meeting explained that he was there——

The Court: Just a minute now. You haven't gotten down [2573] to asking what was said yet. He just wants to know who was there.

The Witness: I was going to put it this way: Mr. Woods was actually representing 17 fish dealers. In other words, they were present through his presence.

The Court: You mean he stated that he was?

The Witness: That is correct.

Q. (By Mr. Margolis): The meeting was held, you say, at the Western Seafood Institute?

A. Yes.

Q. Do they have offices in Los Angeles?

A. Yes, they have offices in Los Angeles.

Q. And they had at that time?

A. Yes, at that time.

Q. Do you know if they still have offices in Los Angeles?

A. I don't know. I have heard recently——

Q. Don't tell us what you have heard. Just tell us what you know. Do you know?

A. Up until, I would say, as far as my own knowledge goes, up until about six months ago they had offices in Los Angeles. Since then I don't know. I never bothered to check.

(Testimony of Jeff Kibre.)

Q. Will you tell us to the best of your recollection what occurred at that meeting? [2574]

Mr. Rubin: Just a minute, Mr. Kibre.

If your Honor please, we are going to object to this line of testimony on the ground that it is self-serving. I don't know whether the document has been marked for identification or not, but if your Honor will look at it——

The Court: No, it has not. Let me see it.

(The document referred to was passed to the Court.)

Mr. Margolis: I didn't intend to offer it in evidence because I don't think it is admissible. It is a document to refresh his recollection but not to be offered.

The Court: But which will show what his recollection will be and aid me in determining whether or not it is material and admissible.

Have you finished your objection?

Mr. Dixon: As well as the objection of immateriality.

The Court: Objection sustained.

* * *

Mr. Margolis: I have a document which I will ask to be marked Defendants' exhibit next in order for identification.

The Clerk: P. [2575]

(The document referred to was marked Defendants' Exhibit P for identification.)

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): Mr. Kibre, state whether or not one of the activities of Local 36 at that time was to give publicity to its members or to keep its members advised of these meetings and of the activities that were going on. A. Yes.

Q. I show you a document which has been marked—incidentally, before we get to that—was it also one of the activities of Local 36 to give press releases and public information concerning these activities and these demands?

A. At all times.

Q. Now I show you a document which has been marked Defendants' Exhibit P for identification and ask you to state what that document is.

* * *

The Court: Let me see the document.

(The document referred to was passed to the Court.)

The Court: It says: "A Message to All Market Fishermen." It does not appear to bear a date. Do you know when it was dated?

Mr. Margolis: The date can be determined by reference [2576] to its contents, your Honor. It refers to the meeting of June 12th.

The Court: Yes, I think the document speaks for itself as to what it is. I will read this while I have it here because I apprehend that you will ask some other question to which an objection will be made concerning the document.

(Testimony of Jeff Kibre.)

Mr. Margolis: I felt that it was necessary to lay a foundation by showing that it was a publication of the union, that it was circulated among the members, and then I intended to offer it. I wasn't going to have the document read, but I thought that that foundation was necessary.

The Court: I think the stipulation you made with the Government would go to this, wouldn't it?

Mr. Dixon: Yes.

The Court: That it is a document of the union circulated to the members

Mr. Dixon: Yes.

The Court: And that it is what it purports to be?

Mr. Margolis: If it is a stipulation that it is a document of Local 36 which was circulated among its membership, then I offer the document in evidence.

The Court: It is signed Southern California Market Fishermen's Committee.

Mr. Margolis: I wanted to explain what that was, your Honor. That was a committee of Local 36.

* * *

Mr. Rubin: We will stipulate that the document is what it purports to be, Mr. Margolis.

Mr. Margolis: But it is necessary to do more than that. I want to establish that the committee was a committee of Local 36 and that was circulated among the membership of Local 36 and among other fishermen. Now that is what I intended to establish by my foundation, your Honor. If that foundation is stipulated to, if there is such a stipula-

(Testimony of Jeff Kibre.)

tion, I will offer it in evidence.

Mr. Rubin: We will so stipulate.

Mr. Dixon: We will so stipulate at the same time. .

The Court: All right. You offer it now?

Mr. Margolis: Yes.

Mr. Dixon: Now the objection is made, your Honor.

The Court: And the ground?

Mr. Dixon: On the ground it is immaterial and self-serving, particularly portions thereof.

Mr. Margolis: Any activity, I assume, is self-serving.

Mr. Dixon: As I understand it, your Honor, the purpose of this line of testimony is to show the nature of this organization as an aid to the jury in determining what kind of an organization it is. I submit that this kind of a document does not help in any way on that basis and therefore is wholly immaterial. [2579]

Mr. Margolis: We can show what it was by what it said and did. This is the way the local acted. It didn't act by digging ditches. This is what it did.

The Court: Objection sustained.

Q. (By Mr. Margolis): At the meeting of June 12, 1944, were arrangements made for another meeting

A. Yes.

Q. Was such a meeting held? A. Yes.

Q. By the meeting of June 12th I meant the meeting at the Western Seafood Institute.

A. That's right.

(Testimony of Jeff Kibre.)

Q. How long after June 12th was the meeting following it held, approximately?

A. The next meeting, to the best of my recollection, took place the latter part of that same week, extreme end of the week or the first of the following week. It was a very short period thereafter.

Q. And where was that meeting held?

A. That meeting was also held in the office of the—in the same office, Western Seafood.

Q. Western Seafood Institute office?

A. Yes.

Q. Who was present at that meeting?

A. Pretty much the same group: myself, Mr. McKittrick, [2580] the other members of the committee from the union, Local 36, Mr. Livingston, the conciliator, and Mr. Lawton and Mr. Woods, the executive secretary of the Western Seafood Institute.

Q. Were any individual fish dealers present at that meeting so far as you can recall?

A. As far as I can recall, Mr. Woods and Mr. Lawton stated that they represented a substantial majority of the leaders, and that the dealers had authorized them to be at this meeting and to represent them. [2581]

* * *

Q. (By Mr. Margolis): At that meeting what subjects were discussed?

A. The matter of a contract between the union and the fish dealers.

(Testimony of Jeff Kibre.)

Q. At that time do you recall the substance of what was said by the various persons present?

* * *

A. Yes.

Q. Will you tell us what was said?

Mr. Rubin: If your Honor please, under counsel's own [2582] avowal just a moment ago there was no agreement reached, and we submit that any conversation among the dealers and these defendants for that reason is wholly immaterial.

Mr. Margolis: There is no evidence that no agreement was reached.

The Court: The objection is sustained.

Q. (By Mr. Margolis): Was any agreement reached at that meeting? A. No.

The Court: What was the answer?

The Witness: No.

Q. (By Mr. Margolis): Subsequent to that were any other meetings held?

A. None that I know of.

Mr. Margolis: I have a letter here dated July 10, 1944, a photostatic copy, rather, that I ask be marked Exhibit Q.

(The document referred to was marked Exhibit Q for identification.)

* * *

The Court: It is addressed to All Southern California Fish Dealers.

Mr. Rubin: That is correct, and that it has been mailed and so circulated.

(Testimony of Jeff Kibre.)

Mr. Margolis: To All Southern California Fish Dealers, both fish dealers located on the wharf and fish dealers located elsewhere inland in Southern California, will you stipulate to that, that copies of this letter were mailed?

Mr. Rubin: If that is your statement we will so stipulate.

Mr. Margolis: That is my statement as to what the witness would testify.

Mr. Rubin: We will so stipulate. [2585]

Mr. Margolis: I offer the letter in evidence as Defendants' Exhibit Q.

Mr. Dixon: I now object, if my previous objection has been premature.

* * *

The Court: Objection sustained.

Mr. Margolis: May I have Exhibit 201, Mr. Clerk?

(The document referred to was passed to the Court.)

Mr. Margolis: At this time, if your Honor please, the defendants offer in evidence the portions of Government's Exhibit 201 which were not offered by the Government and offer it in its entirety and offer each and every part of the exhibit.

The Court: Exhibit 201 being minutes?

Mr. Margolis: Of the barracuda conference, April 18, 1946. Part of that is in evidence, your Honor. We want to offer it in its entirety.

The Court: I understand.

(Testimony of Jeff Kibre.)

Mr. Dixon: I feel that portions thereof, your Honor, that are offered are immaterial and object to it.

The Court: The objection is overruled. The document having been partially admitted, the jury are entitled to see the remainder of the document in order that they may ascertain what Justice Frankfurter refers to as the "climate."

Mr. Margolis: I wonder what we ought to do, your Honor, about the red portions?

The Court: Those are the portions that were excluded?

Mr. Margolis: No.

The Court: It was all admitted except the red marks. Do you want to read the red marked parts?

Mr. Margolis: Yes.

The Court: So that the jury will understand, there were a number of documents that were admitted in part. Some of them were admitted that had little red checks along the paragraphs, others—and this being one of the others—the portion was admitted that was not surrounded by red pencil. I have now admitted the portion surrounded by red pencil.

Mr. Margolis: I would like at this time to read to the jury these minutes of the barracuda conference, April 18, 1946, 1:30 p.m.

(At this point counsel read from Government's Exhibit 201 to the jury.)

Q. Let me stop there for a moment, Mr. Kibre, and ask you this question: Were you making this report that is referred to in this exhibit?

(Testimony of Jeff Kibre.)

A. Well, I made a very lengthy report which is covered rather sketchily in those minutes there, and in that instance there I can't quite make out exactly what is meant by the [2588] minutes that you just read.

Q. Do you recall what you said with regard to market conditions? A. Yes.

Q. What did you say?

Mr. Rubin: Just a moment. Now, if the Court please, that is objected to as being completely self-serving, and at the conclusion of this testimony we are going to move to strike the testimony of the material which has been adduced from this exhibit.

The Court: The objection to the question is sustained.

Mr. Margolis: I will go on with the reading.

(At this point counsel read from Government's Exhibit 201 to the jury.)

Mr. Rubin: Your Honor please, at this time we move to strike that portion of Government's Exhibit No. 201 and ask the jury to disregard the same with reference to the question of Mr. Kibre's statements to his organization with respect to wages. We submit, if your Honor please, that that certainly is self-serving and is not determinative of what is or is not wages in this case. [2589]

The Court: No, it is not determinative. It is self-serving. If it were not in the document which has been partially admitted by the government it would not be admissible. But it being a part of the

(Testimony of Jeff Kibre.)

minutes which were admitted as a government's exhibit, the remainder of that document is, in my judgment, admissible, as I indicated at the time that I admitted the other document for the government. The portion, however, admitted on behalf of the defendants, and of document 201, which is encircled in red, will be a defendants' exhibit and will take a defendants' exhibit letter, and it will be Exhibit R. I guess the only thing that you can do is describe that in the record and in the minutes as Exhibit R consisting of the portion of Exhibit 201 encircled in red pencil.

Mr. Margolis: Should this also be marked with a "R," your Honor?

The Court: I suppose you could put a "R" along the side. You might make that notation, put another tag on it, Mr. Clerk.

(The document referred to was received in evidence and marked Defendants' Exhibit R.)

* * *

Q. (By Mr. Margolis): Mr. Kibre, in this Exhibit 201 R there is reference to a marketing program of the union; are you familiar with that marketing program? A. Yes.

* * *

Q. (By Mr. Margolis): Was a marketing program adopted [2593] for the Southern California area? A. Yes.

Q. Will you tell us when action was first taken in connection with that marketing program, approximately?

(Testimony of Jeff Kibre.)

A. We began to discuss informally with the dealers in Los Angeles the possibility of an over-all marketing campaign in this area the early part of the year.

Q. The early part of what year?

A. The early part of 1946. In fact, the very first of January, and at our International Convention, which took place in the latter part of January, a resolution was adopted directing all of the affiliates up and down the entire West Coast to join with the local organization in this area to undertake a major marketing program in the Los Angeles market area.

Q. Will you tell us—

A. And meetings were held in Seattle to discuss with the dealers in that area and with the Federal Fish and Wild Life Service the possibility of launching this campaign in the Los Angeles market area, so that the meetings that took place up there were directly concerned with the possibility of undertaking a campaign in this particular market area.

Q. You say that the Fish and Wild Life Service participated in these meetings?

A. Yes, we requested the services of the Market Service [2594] Division of the Fish and Wild Life Service. That is, of their national office in Washington, D. C.

* * *

Q. (By Mr. Margolis): Were any meetings held locally in which the Fish and Wild Life Service participated? A. Yes.

(Testimony of Jeff Kibre.)

Q. When were those meetings held?

A. The first meeting was held shortly after this Barracuda Conference took place, that is, the latter part of April, here in Los Angeles at the office of one of the fish dealers. I think it was, as I recall, Central Fish and Oyster here in Los Angeles.

Q. Is that Central Fish and Oyster located——

A. Not Central Fish and Oyster. One of the major downtown dealers. I can't recall what the name of the firm was. I do recall that it took place in this office, and it [2595] was in a loft over the fish room. That is about as near as I can place it. I could find it but I can't recall the name of it.

Q. You just referred to a Barracuda Conference. Are you referring to the Barracuda Conference on April 18, 1946, the minutes of which I have just read to the jury?

A. Yes, the meeting that I was talking about took place some few days after that Barracuda Conference meeting. [2596]

Q. Now who was present at that meeting?

* * *

The Witness: Those that were present, to the best of my knowledge, were as follows: First of all, Ralph Russell, who is the chief of the Market Service Division of the Fish and Wildlife Service; Harry Hinkle, from the local Fish and Wildlife Service of the local San Pedro office who puts out their market service bulletins, at least a half a dozen fish dealers, including a Mr. Puchinelli, the manager of the

(Testimony of Jeff Kibre.)

Paladini Seafood Company, Mr. Louis Bevarino, who at that time was the head of a large fish company here in Los Angeles, and another fish dealer by the name of Vitale, who handles smoked and cured fish here in Los Angeles under the trade name of Lasco, as I recall. Then there were about three or four more dealers, and there were a couple of representatives from the union.

Q. (By Mr. Margolis): In addition to yourself? A. That is right.

Q. Tell us generally the substance of the matters taken up and discussed at that time.

A. We explained—and I stated to those present—that it was the desire of the union to undertake and initiate a marketing campaign in the Los Angeles market area which would serve to stimulate the sales of locally caught fish and also serve to stimulate the sales of fish from all other areas up and down the west coast. In other words, a program to stimulate the sale of fish. As I remarked earlier, fish is fish. That was the essence of the program.

We proposed to this group there that the market service division be called upon to supply technical experts for the [2598] purpose of holding cookery classes, demonstrations; also for the purpose of undertaking a campaign to teach butchers in the meat shops how to properly display fish, how to properly preserve fish and how to properly make sales of fish.

Also a campaign to educate the chefs in the restaurants in the Los Angeles market area as to how to

(Testimony of Jeff Kibre.)

properly prepare fish, and a number of other measures, all of which were calculated to increase the sales of fish in this area.

And we proposed that the dealers and the Fish and Wildlife Service join with the union in setting up what we proposed should be called a fishery market development committee for Los Angeles, something along those lines.

The gist of it was that we were proposing a joint marketing campaign.

Q. To be addressed to consumers of fish?

A. That is right; yes.

Q. And by "consumers" you mean the people who eat fish?

A. Yes, the people that we hoped would eat fish. We even had in mind that the mayor should declare an official fish week as a means of stimulating sales.

Mr. Russell, the chief of the market service division of the Fish and Wildlife Service, reported to us and told us that his agency had been very successful in promoting similar campaigns in several Eastern cities and that he felt that such a campaign could be highly successful in the Los Angeles [2599] market area, and further pledged the support of his agency as far as furnishing what technical help and assistance they could make available.

He stated they would make available, for example, an expert dietician who was experienced in the holding of cookery classes and demonstrations and all that sort of thing.

(Testimony of Jeff Kibre.)

The dealers expressed very keen interest in the program, and the windup of the meeting was that a subsequent meeting was to be called for about a week later at which time it was hoped to obtain a larger representation from the dealers in this area as well as representatives from the Seattle wholesalers and the Astoria wholesalers, as well as from the union in that area, to see to what extent they would cooperate in raising funds for advertising purposes as a part of this campaign.

Q. What was done? Was there another meeting held?

A. Yes, there was another meeting held the first week in May. To the best of my recollection it was around about May 5th, because it was shortly thereafter that I had to leave on an extended trip to the East, so I know it wasn't beyond about May 7th or 8th. It must have been around about May 5th or 6th.

The Court: 1946?

The Witness: 1946; that is right.

And at this meeting which took place at this time, the office of the Western Seafood Institute in Los Angeles, there [2600] was a fairly large turnout. Also at this meeting were present not only all those who had participated before, that is, Mr. Russell from the Wildlife Service, Mr. Hinkle and the fish dealers that I enumerated before, the members of the committee, but there also were present some advertising agency people who had been invited by Mr. Woods and several of the other people from the fish dealers who had been invited for the pur-

(Testimony of Jeff Kibre.)

pose of discussing the possibility of a major advertising campaign to be directed towards the consumers, a campaign such as had been put on, for example, by the California Wine Institute. In fact, I remember that one of the representatives present from the advertising agencies had been very familiar and had worked on that campaign put on by the wine institute which had really built a market for wine in this country, for California wine.

Q. (By Mr. Margolis): What, generally, was done at that meeting?

A. Again we discussed the program which I mentioned before, that is, the development of a marketing campaign in the Los Angeles market area, and at that time we discussed the idea of setting as our objective the doubling of the existing per capita consumption of fish in this area.

Q. Do you know what that is in Los Angeles?

A. Well, it was roughly at that time about seven or eight pounds per capita per year. [2601]

Q. What is it in the United States?

A. The national average is about 14 pounds per person. We felt that at the least that such a campaign could do was to stimulate sales to raise the level of consumption here in this area to a level comparable with other areas of the country. So we felt that that was a minimum goal that could be achieved.

Q. What was the final windup of the meeting?

A. The windup of the meeting was that everyone agreed to the program in principle and a

(Testimony of Jeff Kibre.)

planning committee, as I recall it, was selected. It was agreed to set up a planning committee which would include representatives from the dealers and representatives from the union. This planning committee was then to sit down and map out concrete steps that should be taken, concrete steps with regard to the arranging of funds and concrete steps with regard to the actual steps of a consumer education marketing campaign.

Also at that meeting I reported that our affiliates in the northern area, in the state of Washington, had agreed to assess themselves a very substantial amount of money to be placed at the disposal of this committee here in Los Angeles for the purpose of advertising and for the purposes of this campaign.

Q. Was this committee thereafter formed?

A. I am sure it was. [2602]

Mr. Margolis: I will ask that this letter be marked next in order.

The Clerk: S.

(The document referred to was marked Defendants' Exhibit S for identification.)

Mr. Margolis: It is a letter dated May 6, 1946, on the letterhead of the Western Seafood Institute, Inc. [2603]

* * *

The Court: It will be admitted. Later you can move to strike it. The objection is overruled.

(The document referred to was received in evidence and marked Defendants' Exhibit S.)

(Testimony of Jeff Kibre.)

Mr. Margolis: Ladies and gentlemen of the jury, this is a letter which has been marked Defendants' Exhibit S, on the letterhead of Western Seafood Institute, Inc., 417 South Hill Street, Los Angeles.

The Court: This letter is admitted and offered for the purpose of showing what Local 36 did?

Mr. Margolis: That is right.

The Court: As part of its functions?

Mr. Margolis: What it did to determine what kind of an organization it is. That is the purpose of it.

The Court: All right.

Mr. Margolis: It is dated 6 May 1946, addressed to Mr. Gilbert Zafran, International Fishermen & Allied Workers of America, San Pedro, California.

(At this point counsel read Defendants' Exhibit S to the jury.)

And it is signed by H. A. Woods, Chairman.

Q. Is the name of the Mr. Woods whom you have referred to as attending this meeting H. A. Woods? A. Yes. [2604]

* * *

Q. (By Mr. Margolis): Do you know what finally came of this marketing program?

A. Well, I left shortly after this meeting, in fact, I left a couple of days after the receipt of that letter. I remember the letter coming into the office of Zafran, because I remember his showing

(Testimony of Jeff Kibre.)

it to me, and the next that I heard of the marketing program was when I talked to Mr. Ralph Russell in Washington upon my arrival there the latter part of May. I stopped in at the Fish and Wild Life Service office in Washington, Mr. Russell was there much to my surprise, I thought he was still out in Los Angeles working on this marketing program, so I asked him what had happened, and he said that he had had to come back to his Washington office, but that the local people had been delegated to assist to their fullest possible extent, and also that they had assigned a dietician to the area. Mr. Russell also told me that on the basis of what he learned after the meeting that I described took place he wasn't too enthusiastic as to the success of the program. He told me that he wasn't very optimistic as to [2605] the cooperation which would be given the program by the dealers here in Los Angeles; that only two dealers had evinced any real enthusiasm in the program after the meeting, and that the balance of them just seemed to want to forget about it and go on as they had always been operating in this area over a long period of years.

Q. Was anything further done as far as you know with regard to this program?

A. As far as I know, other than the few things that the union has been doing, such as publicizing fish through the various unions in this area, through letters and leaflets and such, I don't know anything else that came of that program.

(Testimony of Jeff Kibre.)

Q. You left Los Angeles early in May 1946, is that right? A. Yes, that's right.

Q. And when did you return to Los Angeles?

A. Just prior to June 10th.

The Court: By the way, what date did you see Mr. Russell in Washington?

The Witness: I saw Mr. Russell the latter part of May.

The Court: Do you remember the date?

The Witness: No, I don't, your Honor. I was extremely——

The Court: Do you remember whether it was before or after the incidents described here at the commencement of [2606] your testimony?

The Witness: I didn't even know at that time that there was anything taking place here until I received a telegram about the first week in June, about June 4th or 5th in Washington from Gilbert Zafran. That is the first I heard that it was taking place. I was extremely busy.

The Court: About the distribution of the contracts, the demands, and the strike?

The Witness: Yes, I got a telegram requesting me to come out here as quickly as possible to assist them in the solution of their difficulties, as they put it, something to that effect. I was extremely busy in Washington at that time. It was the time of the negotiations involving the CMU, the Committee for Maritime Unity, and the international officers of the various maritime unions had been

(Testimony of Jeff Kibre.)

requested to be in Washington at that time and assist in the negotiations, so I was spending about 20 hours a day on those negotiations and wouldn't have a very good memory for the exact time that I went over to see Ralph Russell, because I was always dropping over there whenever I had any free time.

Q. You returned, you say, just before June 10. Was it about June 9th or 10th, around there?

A. Yes, I flew back I think it was about June 8th or 9th. I know it was on the week-end, because I spent Sunday at home and didn't show up at the office until June 10th. I [2607] didn't want anybody to know I came into the city on a Sunday, I wanted a day off for a change.

Q. When you returned did you thereafter participate in any meeting with fish dealers or representatives of fish dealers? A. Yes.

Q. When and where was the first meeting?

A. The first meeting that I attended was Monday afternoon, June 10th, in a loft over one of the fish dealers' places on the Municipal Wharf at San Pedro.

Q. Was that Mr. Ross' place?

A. Yes, sir, I think it was his office, upstairs.

Q. I see. Who was present at that meeting besides yourself?

A. Mr. Ekdale, the attorney for the fish dealers. At least five or six fish dealers. It started out with

(Testimony of Jeff Kibre.)

a couple, and additional fish dealers kept drifting in from time to time, so that after at least a half hour, 45 minutes of the meeting, had elapsed, there must have been quite a few of them there. And, in addition, several members of the local union, that is, from Local 36, including, I recall, Mr. Zafran and several others.

Q. Do you remember specifically any of the dealers who were present?

A. Mr. Ross was there, Mr. Vitalich, those are two [2608] that I remember particularly. I don't know the names of the local dealers too well. I know those because I know Mr. Ross, to some extent, personally. I very clearly recall he was there because of what happened at the meeting.

Q. All right. Will you tell us what was said, the substance of what was said at that meeting and by whom?

A. I opened up the session on behalf of the union and told those who were present, that is, the fish dealers and Mr. Ekdale, that I had just returned to San Pedro and just discovered what the situation was, and that I was very anxious to see if an immediate settlement of the difficulties could not be arrived at, and that was the reason I had urged that this meeting take place. [2609]

JEFF KIBRE

the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Margolis:

Q. Mr. Kibre, last evening I think we were discussing the meeting of June 10, was it?

A. Correct.

Q. That you testified was being held in a loft or an office of one of the fish dealers, Mr. Ross, with a number of fish dealers, Mr. Ekdale, yourself and other representatives of the union present?

A. That is correct.

Q. Now I had asked you to state what was said by the various parties present and you had started to answer that question. Will you proceed?

A. I will attempt to give a brief summary of the substance of the discussions to the best of my recollection.

I want to explain, in connection with giving that, this meeting lasted several hours and there were a great many present and a lot of interruptions, so I will try to give, as I say, the substance to the best of my recollection.

At the outset of the meeting I explained that I had been called into the situation by the local officers of Local 36 to assist in bringing about an immediate settlement of the [2620] dispute, and that I had called up Mr. Ekdale and proposed this

(Testimony of Jeff Kibre.)

meeting with that purpose in mind. In other words, to attempt to bring about an immediate settlement of the dispute. [2621]

* * *

A. I spoke for about 10 or 15 minutes, as I recall, at the outset of the meeting, so I went on and made a rather lengthy statement in behalf of the union—I am trying to relate now what I said in that statement to the best of my [2622] recollection. As I said before, I stated that I had been called in by the union to try to effect a speedy settlement of the dispute that was then in progress. I also stated and said to those present that I was surprised to find the dispute taking place, because when I had previously been in Los Angeles up until the early part of May that a program had been developing and was in process of developing designed to bring about a marketing program for fish in this area. [2623]

* * *

A. (Continuing) I went on to explain and state to the dealers present at that meeting, and Mr. Ekdale, that the primary concern of the union and myself as a responsible officer of the International at that time was precisely the question of a marketing program. Since up and down the entire West Coast our fishing fleet was experiencing difficulty in selling their catches of fish, and that therefore I had been instructed by our International executive board to devote my major attention to this matter, and that on that basis I was interested

(Testimony of Jeff Kibre.)

in bringing about an immediate settlement of this particular difficulty in San Pedro, so that both our union in San Pedro and the dealers in the San Pedro area, as well as the market wholesalers in Los Angeles, could devote themselves to the matter of selling more fish.

Mr. Ekdale then said, to the best of my recollection, that he considered the situation there unfortunate, but that he felt it had gone too far to be settled.

I asked him what he meant by that.

He wasn't too clear except to say that he felt the situation had gotten out of hand. I think those were his words.

I then stated that as long as everybody involved could sit around a table and be reasonable and to discuss the problem in good faith that I saw no reason why a settlement could not be effected.

One of the dealers, I think it was Mr. Vitalich,—I remember him very clearly, he was sitting close by, a rather short chap—he broke in and said, “Why can't you call off the picket line, then?”

And I said I was sure that the picket line would be removed just as soon as the union and the committee could be convinced that the dealers were negotiating in good faith. I explained that the purpose of the picket line was to attempt to bring about negotiations on a contract, and that just as soon as the union committee could be convinced that negotiations were proceeding in good faith that I was convinced that the picket line would be removed.

(Testimony of Jeff Kibre.)

Then as I recall—I also told the dealers that as they themselves well knew that the union had been negotiating with these dealers in San Pedro since 1937 from time to time for a contract, and that sooner or later it had to come to a head, and obviously it had finally come to a head at this particular time.

Then, as I recall, Mr. Ekdale and myself got into a long discussion on legal questions. At the outset I pointed out to Mr. Ekdale that I was not a lawyer, that I was considered somewhat as a sea lawyer, as we put it in the fishing industry, but I was not a practicing attorney and that I had tried to involve Mr. Margolis in the meeting, he was acting as our attorney, but that he had been unable to attend [2626] the meeting. However, we did get into a discussion of these legal questions, and Mr. Ekdale stated that he had advised his clients, the fish dealers, that he did not see how they could possibly enter into an agreement with the fishermen to fix the prices of fish. He went on to say from his standpoint as he saw the law that any such agreement would be a violation of the Sherman Act.

I replied to that and said while I didn't have the knowledge of the law that he had and didn't profess to have, at the same time I had made some study out of sheer necessity of the Fishermen's Marketing Act, I had read Judge McColloch's decision of 1943, the decision of January 1943 when he held the contract between our Columbia River affiliate and the Columbia River Packers Association not to be in

(Testimony of Jeff Kibre.)

violation of the Sherman Act, and that I felt that that particular decision, as I explained to Ekdale, had hit the situation here in San Pedro right on the nose. That McColloch in that particular decision——

Mr. Rubin: Just a moment, Mr. Kibre.

Your Honor, this is the kind of testimony that we submit is wholly immaterial.

The Court: No. It is discussion there at that time. And the jury has understood and will understand that they are to take the law not from Mr. Kibre nor from Judge McColloch, but from me, that applies to this case.

Mr. Rubin: The most it could go to would be the intention [2627] of the parties and, as your Honor knows, the type of intent that is necessary here that we submit that that phase is immaterial, that is the basis of it. That is the only basis to which this could go is why these people did these things, and we submit that is immaterial. It is what they did do.

The Court: It is not a lawsuit, I appreciate, between the fishermen and the fish dealers. It is between the government and these defendants. But I think that this testimony is admissible. The objection is overruled.

A. (Continuing): This discussion between Mr. Ekdale and myself, I think, went on over the better part of an hour, it covered a lot of ground. I told Mr. Ekdale that I thought that McColloch's decision had hit the two issues that were involved in San Pedro. First, the matter of whether the union could

(Testimony of Jeff Kibre.)

operate under the provisions of the Fishermen's Marketing Act, and that McColloch had held that the union could be treated as a cooperative for the purposes of that act, for the purpose of marketing its fish. And, secondly, he had ruled that group bargaining for a minimum price contract between the fishermen's union representing the fishermen in the Columbia River area, and the canners, either separately or as a group, was not in violation of the criminal penalty of the Sherman Act.

I then said that the contract in San Pedro was based on [2628] those two basic premises, and that it was the position of the union that the only question in controversy in the past year or so as regards the law was the matter of the closed shop provision in the contract, and that that matter, as Mr. Ekdale knew, was now submitted to a court proceeding in San Francisco, wherein the union had voluntarily agreed to enter into a declaratory suit with the dealers up there to test that particular question, and that since that question was not involved in the San Pedro agreement we thought that there was no real issue that should prevent an amicable settlement. [2629]

I also pointed out and stated to Mr. Ekdale that the War Labor Board in the Alaska Salmon Industry cases had ruled in 1945 that the fishermen were a labor force when they were fishing for salmon, and that they had finally arrived at a directive compelling—and also the War Labor Board had ruled that the prices paid to the fishermen constituted wages, or could be treated as wages——

(Testimony of Jeff Kibre.)

Mr. Dixon: Now, if the Court please, I must rise here to object to that unless your Honor instructs the jury that the War Labor Board rulings have no effect whatever in determining any question or issue involved in this case.

The Court: That is correct. The War Labor Board does not give the jury the law applicable to this case, I am the only one who gives you the law applicable to this case. What the War Labor Board decided or what Judge McCulloch decided or what Mr. Kibre said they decided, or what Mr. Ekdale or anybody else said they decided, is completely and wholly to be disregarded by you so far as that being the law.

The Witness: I even had the decisions of the War Labor Board with me there and Mr. Ekdale said that he had seen these particular decisions from the War Labor Board and he was conversant with the cases in which the War Labor Board required the Alaska salmon industry to enter into negotiations with our affiliates in Alaska or the prices of salmon. We discussed that for some time. [2630]

Then Mr. Ekdale said, particularly with reference to the Fishermen's Marketing Act, that he thought that we did come under the act but that it was his interpretation that whereas we came under the act, that the dealers did not and that therefore the dealers might subject themselves to possible jeopardy in the event that they entered an agreement with us.

(Testimony of Jeff Kibre.)

Then I pointed out to Mr. Ekdale that the act clearly sets forth that fisheries associations can enter into marketing agreements for the purpose of marketing their fish, or for marketing the fish of their members, and that obviously the association will have to enter into agreements. I thought that that covered it.

Well, this discussion went on over a period, I would say, of over an hour or an hour and a half, so finally I said, "Look, I believe it is about time we are getting down from legalities to realities and see if we can't find a basis for settling this dispute." I said that this is what I am concerned with here, this is what the fishermen are concerned with here, and the fishermen certainly are not interested in walking this picket line out here, they are only walking this picket line for the purpose of getting a marketing agreement, and that what they are concerned with is going out and going fishing.

So then we did get down to some brass tacks discussion.

Several of the dealers broke in then and said, "Let's [2631] see if we can't arrive at some basis for settling this."

I said, "That is exactly what we are here for." I said this, then, "Is there any question as to the demands that the union has made with reference to price?" And many of the dealers, including Mr. Ross, said no, they thought the fishermen were being very reasonable, and in fact Mr. Ross said that the dealers were fully conversant with the fact that the

(Testimony of Jeff Kibre.)

fishermen had been faced with steadily rising costs of operation and they were entitled to a price such as the OPA itself, as the ceiling of the fish, particularly in view of the fact that those ceilings had been based on the average of all prices paid for the year 1942 to the fishermen and that these prices were not out of line.

Then I reiterated my request, "Why can't we get together on an agreement then?" And Mr. Ross—I am sure it was Mr. Ross—said well, he considered the program very fine, and considered the contract to be a very reasonable, a very fair contract, and he thought that the program envisioned by that program was a program that would do the industry a great deal of good, and would result in tremendous benefits, not only for the dealers but for the fishermen and for the consumers; but he said that as long as Mr. Ekdale objected, and since Mr. Ekdale was their attorney and he had a great deal of confidence in Mr. Ekdale, he couldn't see how they could possibly sign that contract. [2632]

I said, "It is not a matter of signing a particular contract that we should be concerned with, but what we are interested in is trying to work out some form of agreement here which will give the fishermen some measure of security so that they will know what they are going to get when they go out to make their catches, and that we felt that such a measure of security was indispensable to the bringing about of a sound relationship of the fishermen and the dealers in this area so that we could then go ahead on a full-fledged marketing campaign."

(Testimony of Jeff Kibre.)

Then there was general discussion all around the room, so I finally said, "Why don't we at least agree here this afternoon to come to an agreement?" I suggested that the best way to accomplish that would be for both sides to agree to set up a small committee, a couple of people from each side, to then sit down and thrash the whole thing over, discuss all the objections that the dealers had, discuss the desires of the fishermen, and see if we couldn't arrive at some reasonable basis for a settlement.

There was a great deal of discussion of that proposal on my part and finally there was substantial agreement among all those present that such a small committee should be created, and I said that I would get hold of our attorney and that we should then try to have a meeting the following morning of Mr. Ekdale, Mr. Margolis and at least two from the union and two [2633] from the dealers.

Everybody thought that was a good idea, and I then reiterated that if everybody felt along those lines that we should go out of that meeting with a feeling that we were going to reach an agreement and stick to that feeling for the next day or so and I was convinced we could settle up the entire deal.

At that time—I think it was about 4:00 o'clock in the afternoon, the meeting had started around 1:00 or 1:30—everybody was in a good frame of mind and the meeting finally broke up with everybody feeling rather happy and feeling that we had made substantial progress toward a settlement of the dispute. [2634]

(Testimony of Jeff Kibre.)

Mr. Rubin: Just a moment, if your Honor please, The form of the question is leading. He stated that that is his full recollection.

The Court: Objection sustained.

Mr. Margolis: If your Honor please, as I understand the rule, I merely want to direct the witness' attention to a particular subject. Once the witness has stated his full recollection, then I think it is correct to direct his attention to a particular subject.

The Witness: If you will give me a moment to think, maybe I can think back over the meeting. It took about three hours.

Mr. Margolis: Maybe I can reframe the question so that it won't be leading.

Q. Do you recall whether or not anything was said——

Mr. Rubin: Just a moment. That is exactly the same question and the same objection.

The Court: Objection sustained.

The Witness: Maybe I can, by taking a moment here to go back in my mind over the meeting——

The Court: There isn't any question pending.

The Witness: Pardon me.

Mr. Margolis: Let's get down to the next statement.

Q. Was there a meeting on the 11th? [2635]

A. Yes, there was a meeting the following morning quite early in the morning about 9:00 o'clock, in Mr. Ekdale's office in San Pedro.

Q. Who was present at that meeting?

(Testimony of Jeff Kibre.)

A. Mr. Margolis, our attorney, myself, Mr. Zaf-ran, and Mr. Ekdale, Mr. Ross, and I think Mr. Vitalich. I don't think Mr. Vitalich was present at the outset; I think he came in and left, or something. At any rate, Mr. Ross was there and there was one more dealer who was supposed to be there. There were supposed to be two dealers. I think it was Mr. Vitalich that came in and went out, or came in later and went out.

Q. All right. Now how long did that meeting last?

A. That meeting lasted until 12:00 o'clock. I recall that very clearly.

Q. Can you tell us what was said and done by the various persons present at that meeting?

A. At the very outset of the meeting we got into a discussion as to a possible settlement of the dispute, and Mr. Margolis suggested that we should consider—by the way, this is something I did leave out of the meeting that took place on the 10th, the previous afternoon.

There was some discussion at the meeting on Monday afternoon in Mr. Ross' office of a new agreement or a new proposed basis for an agreement that had been suggested by Mr. [2636] Margolis prior to the time of my return. It was termed a trip-by-trip agreement, and there was some discussion of that at the meeting Monday afternoon, so that when we met Tuesday morning in Mr. Ekdale's office this was the first subject that

(Testimony of Jeff Kibre.)

came up, this matter of the proposed trip agreement which have been submitted by Mr. Margolis on behalf of the union in my absence.

So that was the first matter that came up for discussion, and then as soon as that matter came up there was a long discussion between Mr. Margolis and Mr. Ekdale again on the legal questions, the Sherman Antitrust Act, the Fisheries Marketing Act, Judge McColloch's decision, and the War Labor Board decision, and the Sherman Antitrust Act and whether price agreements between the fishermen and the dealers involved consumer price-fixing, and so forth and so on. This discussion I think took place over about an hour.

I interrupted a couple of times and suggested we should get back to the proposed idea for a settlement of the agreement, but these lawyers, as they generally do, they get going and they really went on for quite a while.

The Court: I suppose they followed substantially the same ground you covered?

The Witness: That is right, except on a much higher, up-in-the-sky plane, your Honor.

So I kept interrupting and trying to get them down to [2637] earth on the proposed trip settlement.

So finally we did get down to a discussion of that, and Mr. Ekdale said that he thought that that possibly was a good basis for a settlement, and so we began to discuss that and see if we could not use that as the basis then for a settlement and work out a complete agreement.

(Testimony of Jeff Kibre.)

We then discussed the matter pro and con for some time and it was suggested by Mr. Margolis—and I think by myself—that we should use the trip agreement as the basis for settlement and then try to work out an exchange of letters which would cover the various points at issue and that such an exchange of letters should constitute a settlement of the dispute.

It was then suggested—I think, in fact, it was I that suggested it—in the interests of speeding up the matter, that we should dictate the letters right then and there. Mr. Ekdale agreed and called in his secretary and the dictation proceeded.

Mr. Ekdale would dictate, then Mr. Margolis would dictate, and then there would be consultation back and forth, and finally we dictated a fairly lengthy letter which was to be a letter sent by the union to the dealers.

Q. (By Mr. Margolis): I show you a document which has been marked Defendants' Exhibit A for identification. [2638]

* * *

Q. Following the dictation of the letter which has been marked for identification as Defendants' Exhibit A, was another document dictated?

A. Yes, another letter was dictated which was to be a letter from the dealers to the union.

Q. By whom was that dictated?

A. That was dictated by Mr. Ekdale with some assistance from Mr. Margolis, as I recall.

(Testimony of Jeff Kibre.)

Q. In pretty much the same way as the first letter?

A. Yes, because both letters were to constitute an exchange of letters, one from the dealers and one from the union, and we were there to agree on what was in both letters, in fact, because we were trying to reach agreement on what would go into the letters because that would then be an agreement on immediately ending the difficulties. [2640]

Q. Is that what was said?

A. Yes, that's right. As a matter of fact, the reason for the speed there is that we had already called a meeting of the strike committee, of the San Pedro strike committee, for 1:00 o'clock that afternoon, at which we were to submit the proposed letters.

Q. I see. I show you a document which is marked Defendants' Exhibit B, for identification, and ask you to state what that is.

A. That is the letter which was to be sent to the dealers—I mean to be sent to the union.

Q. That was the second letter that was dictated, is that right?

A. That is the second letter that was dictated, and this was to be the letter from the dealers to the union.

Q. In reply to the letter marked Defendants' Exhibit A?

A. In reply to the letter.

Mr. Margolis: We offer Defendant's Exhibits A and B in evidence.

(Testimony of Jeff Kibre.)

Mr. Dixon: Same objection, your Honor, to both exhibits.

The Court: How does Local 36 act? Through an executive committee?

The Witness: Yes, your Honor. It has an executive committee [2641] which makes decisions, but those decisions must thereupon be ratified by the membership.

The Court: Had the executive committee conferred power upon you to act for them in that connection?

The Witness: The manner in which that operates, your Honor, is this: That when the strike started the membership had set up a strike committee, and it authorized that strike committee to act as a negotiating committee and to enter into such negotiations as the strike committee deemed necessary.

The Court: On behalf of all the members?

The Witness: Precisely.

The Court: Of the union?

The Witness: Yes. And the strike committee thereupon requested me to act in their behalf.

Q. (By Mr. Margolis): Mr. Zafran was also present for the local?

A. Mr. Zafran was present during all of these discussions and actively participated.

The Court: Who was the strike committee?

The Witness: The strike committee—well, that was a committee elected by the membership.

The Court: Who were they? What were their names?

(Testimony of Jeff Kibre.)

The Witness: Mr. Zafran, Tommy here in the court room.

The Court: Mr. Sawyer? [2642]

The Witness: Mr. Sawyer, Tommy Sawyer as we call him. Smitty over here.

Q. (By Mr. Margolis): That is Mr. Smith?

The Court: H. R. Smith?

The Witness: That's right. There were about at least a dozen on the strike committee.

Q. (By Mr. Margolis): Do you remember the other names?

A. I was out of town when all of this took place.

The Court: You don't remember?

The Witness: I only had a brief meeting with the strike committee Monday morning prior to the meeting with the dealers. I had very little other than the meeting where the strike committee authorized me to meet with the dealers Monday afternoon to be the spokesman for the committee.

Q. (By Mr. Margolis): One more question: Do you know by whom Mr. Margolis was retained in that connection?

A. By Local 36. Mr. Zafran, of course, is the secretary-treasurer of the entire local, and the secretary-treasurer of the Joint Board representing the entire local.

The Court: I think that the only ground of admissibility of these would be defensively that the parties had withdrawn from whatever their agreement was before, because the allegation of the

(Testimony of Jeff Kibre.)

indictment is: beginning some time prior to May 1946 and continuing thereafter up to and including the date of the return of this indictment, which was [2643] August 25, 1946. However, I don't think sufficient foundation has been laid for that.

Mr. Margolis: We intend——

The Court: In view of his testimony just now concerning the strike committee and the powers of those persons to act on behalf of Local 36.

Mr. Margolis: I will lay more foundation.

Q. (By Mr. Margolis): Was a membership meeting of Local 36 held that evening in San Pedro?

A. There was a meeting of the strike committee in the afternoon of Tuesday.

Q. Was there a membership meeting in the evening?

A. There was a membership meeting subsequent to the meeting of the strike committee. There was also a series of membership meeting of all the units. [2644]

* * *

Mr. Margolis: If your Honor please, at this time I want to offer in evidence that portion of Government's Exhibit 313 which was not admitted at the time that the government offered the exhibit, rather, which was excluded by the government in its offer.

The Court: I think this portion which is excluded is admissible, whether it is surrounded by light red or heavy red. [2645]

* * *

(Testimony of Jeff Kibre.)

The Court: Yes, defendants' T will be all the portions enclosed in light and heavy red in Government's Exhibit 313.

Mr. Margolis: I think the light red is in.

(The document referred to was received as indicated and marked Defendants' Exhibit T.)

* * *

Q. (By Mr. Margolis): I show you Government's Exhibit 313 and Defendants' Exhibit T, and I direct particularly your attention to that portion of the exhibit encircled in dark red—first of all, before doing that, those are meetings of the strike committee on June 11, 1946, is that right?

A. That's right.

The Court: Were you present?

Q. (By Mr. Margolis): Were you present at that meeting?

A. Yes, I was present at all the meetings after this proposal was worked out.

The Court: Were you present at that meeting?

A. Yes.

Q. (By Mr. Margolis): Were you present at that meeting?

A. That's right.

Q. I direct your attention particularly, then, to the portion encircled in dark red, which is now Defendants' Exhibit T, and the subsequent portion of this reading as follows:

“Discussion and reading of the proposal tentatively accepted by the San Pedro dealers. General discussion on the merits of the pro-

(Testimony of Jeff Kibre.)

posal. Moved, [2647] seconded That we concur in the Joint Council recommendation regards pulling pickets upon receipt of the accepting markets signature. Carried."

Were you present when that discussion took place? A. Yes.

Q. Will you tell us what the discussion was about?

A. The discussion was about the proposed agreements in the form of the letters that had been drafted, and further that I had——

Q. The proposed letters, just so we can tie them in here, are you referring to the proposed letters that have been marked Defendants' Exhibits A and B for identification?

A. Yes, sir, that's right.

Q. Go ahead with your answer.

A. I gave the committee a full explanation of these letters and recommended to the committee that they accept a settlement based on these letters, and that picket lines immediately be withdrawn.

Q. Do you know whether or not subsequent to this the letter marked Defendants' Exhibit A was executed by the union?

A. Yes, the letter was.

Q. And was it sent to the dealers?

A. A letter was delivered to each of the dealers.

Q. Executed by the union? [2648]

A. Executed by the local union.

(Testimony of Jeff Kibre.)

Mr. Margolis: We renew our offer, your Honor, of Defendants' Exhibits A and B.

Mr. Rubin: We would like to take him on voir dire as to Exhibit B.

* * *

Voir Dire Examination

By Mr. Rubin:

Q. Mr. Kibre, as to Defendants' Exhibit B which the record shows is the responding letter to this letter, was that ever executed by the fish dealers?

A. I don't think that the union received a signed copy of that letter.

Q. Do you know whether or not it was ever executed by the fish dealers?

A. I said we did not receive a signed copy.

Q. That isn't the question. Do you know whether or not it was ever executed by the fish dealers?

A. I don't think it was. [2649]

* * *

The jury returned to the courtroom at 11:45 o'clock a.m.)

* * *

Mr. Margolis: Your Honor please, has the ruling been made on A and B?

The Court: Documents A and B for identification are admitted in evidence.

(The documents referred to were received in evidence and marked Defendants' Exhibits A and B respectively.) [2653]

* * *

(Testimony of Jeff Kibre.)

The Court: These documents are offered in evidence and are admitted in evidence, ladies and gentlemen of the jury, for three purposes: First, with relation to the defendant Kibre personally and his connection with the alleged conspiracy and conduct, secondly, with relation to the defendants' contention as to what their purpose and object of the conspiracy was and, thirdly, to show that there was an abandonment of the conspiracy during the period of time that the government alleges to have existed.

When I say they are offered for that purpose, it is up to you to determine and weigh them to see whether or not, in your judgment, they do prove, as all other evidence must be weighed by you.

Mr. Margolis: At the appropriate time we will argue what we intend by these documents.

The Court: The parties at the end of the case will be given ample opportunity to argue the evidence to you.

Mr. Margolis: Defendants' Exhibit A is a letter dated June 11, 1946, addressed to the fresh fish dealers of the port of San Pedro and reads as follows:

(At this point counsel read Defendants' Exhibit A to the jury.) [2654]

Then, ladies and gentlemen, Exhibit B, Defendants' Exhibit B, the second letter testified to by Mr. Kibre is likewise dated June 11, 1946, and is

(Testimony of Jeff Kibre.)

addressed: "International Fishermen and Allied Workers, Attention Local 36, Berth 73, San Pedro, California."

* * *

(Whereupon Mr. Margolis read Defendants' Exhibit B to the jury.)

Direct Examination

(Resumed)

By Mr. Margolis:

Q. These are the two letters, Mr. Kibre, which were [2655] dictated as you have described. Now, following the dictation of those letters was there any further conversation? A. Yes.

Q. Will you tell us what was said?

A. Mr. Ekdale expressed himself, stated that he was completely satisfied with the proposed agreement that is embodied in the letter, and said, further, that he was completely satisfied that the type of agreement contained in the letters was not in violation with the Sherman Act as he understood it.

Q. Was there anything further that you recall?

A. What was that?

Q. Was there anything further that you recall of the conversation?

A. Mr. Ekdale stated that he was satisfied and felt very happy about the outcome of the negotiations and was quite certain that the dealers would accept the proposals.

Q. Were there any arrangements made with regard to what was to be done with the two letters?

(Testimony of Jeff Kibre.)

A. Yes, the letters were to be immediately typed up, and we made arrangements for Gilbert Zafran to pick up our letter,—that is, the letters were to be typed in the office there, and we made arrangements for Gilbert Zafran to pick up our letter and to bring it to the union office by 1:00 o'clock so we could submit it to the committee. And the [2656] dealers, in turn, as Mr. Ekdale stated, would hold a meeting immediately to ratify their letter and convey it to us.

Q. Did you subsequently receive a letter from the dealers with relation to this matter?

A. Yes, we did, after several days.

Q. Was it the letter which is in evidence as Defendants' Exhibit B? A. No.

Q. I show you a letter which has been marked as Defendants' Exhibit C, for identification, and ask you if you know what that letter is.

Mr. Rubin: We will stipulate to the foundation, Mr. Margolis.

A. This is the letter that was received near the end of the week from the fish dealers.

Mr. Margolis: If your Honor please, at this time we offer Defendants' Exhibit C, for identification, in evidence.

Mr. Dixon: No objection.

The Court: Admitted.

(The document referred to was received in evidence and marked Defendants' Exhibit C.)

(Testimony of Jeff Kibre.)

Mr. Margolis: I want to read the letter. It will take several minutes to read. Shall we do it before or after lunch?

Mr. Rubin: May be have it read now, if your Honor please? [2657] It is part of the series of these other two letters.

* * *

Mr. Margolis: Before reading the letter I see there is one matter I overlooked.

At this time, your Honor, I would like to offer in evidence those portions of Govenment's Exhibit 224 which were omitted by the government in its offer of that exhibit.

The Court: Any objection?

Mr. Dixon: No, your Honor.

The Court: Admitted. That will be the next letter.

The Clerk: U.

(The portions of the document referred to were received in evidence and marked Defendants' Exhibit U.)

Mr. Margolis: I would like to read from the portions of Exhibit 224 which were just admitted into evidence and which are now Defendants' Exhibit U. This is dated June 12, 1946.

(Whereupon counsel read the portion referred to marked Defendants' Exhibit U.)

JEFF KIBRE

called as a witness by and in behalf of the defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination
(Resumed)

By Mr. Margolis:

Q. The reference there is to Defendants' Exhibits A and B?

A. Yes, the letters that were discussed.

Q. Just before the session adjourned this morning, you had testified concerning the receipt of, I believe, a reply from the dealers which was different from the reply which had been drafted in Mr. Ekdale's office on June 12th.

A. That is right.

Q. And that is in evidence as Defendants' Exhibit C, and at this time I would like to read it to the jury.

It is dated 14 June 1946, addressed to International Fishermen and Allied Workers, attention Local 36, Berth 73, San Pedro, California. Gentlemen: Reference is made to your letter of June 11, 1946—

If I may pause there, the letter of June 11, 1946, had previously been sent signed to the dealers, is that right?

A. That's right.

(Whereupon Mr. Margolis read Defendants' Exhibit C to the jury.) [2662]

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): Following the receipt of that letter was another union meeting held at which you were present which took up the question of the rejection of the dealers as I have just read?

A. Yes.

Q. I will ask you to look at Exhibit 228 and state whether or not that exhibit is the minutes of the meeting following the receipt of that rejection.

* * *

A. Yes, these are the minutes.

Mr. Margolis: Now, if your Honor please, we will offer those portions of Exhibit 228 which the government deleted.

* * *

The Court: The objection is overruled. That is admitted as "V."

(The document referred to was received in evidence and marked Defendants' Exhibit V.)

Mr. Rubin: As I understand your Honor's ruling, it is [2663] on the same basis that your Honor overruled our other objections to a similar type of evidence?

The Court: That is correct. It is admitted only to show part of the surrounding circumstances which occurred at the time of the events set forth in there in order that the jury may have that to aid them in weighing the portion admitted as a government exhibit.

Mr. Margolis: Now, I would like to read to you, ladies and gentlemen——

(Testimony of Jeff Kibre.)

The Court: I think perhaps I should also state this at this time. I have been thinking over the matter suggested before the jury came down and I think that I should make a further statement to the jury in connection with that matter, in order that you may be guided in connection with your examination.

This morning I stated to you, ladies and gentlemen of the jury, that certain documents, that is, A and B, were offered in evidence by the defendants and were admitted for three purposes: First, with relation to the defendant Kibre personally and his connection or lack of connection with the alleged conspiracy; and, secondly, with relation to the defendants' contention as to what their purpose and object of the conspiracy—if you ultimately find one existed—was; and, thirdly, to show that as the defendants contend or may contend from the evidence that there was an abandonment of the [2665] conspiracy during the period of time that the government alleges it to have existed.

I should further state to you that the indictment alleges the existence of the conspiracy up to the date of the filing of the indictment, which was August. The government offered proof of the continuance—calculated to show the continuance of a conspiracy through June, I think some time in early July, and rested their case. If during that period of time the parties abandoned the conspiracy, and you should conclude, first, that there was a conspiracy and, secondly, that they abandoned it at

(Testimony of Jeff Kibre.)

that time, then it has relation to the weight that you should give the testimony of members of the alleged conspiracy subsequent to the time of the abandonment. In other words, where a criminal conspiracy is shown to exist, if you conclude that it does exist, then the declaration of each person can be introduced and considered by you as declarations and admissions against all of them, that is, after you once find there is a conspiracy. But if you find during that period of the alleged conspiracy it was abandoned, thereafter any declarations or admissions can only be admitted against the person making them. [2665]

Mr. Margolis: Your Honor, please, I assume——

The Court: I thought that I should, while you had this witness on the stand and while these exhibits are here, make that statement to the jury because at the conclusion of the case I will instruct the jury in substance to the same effect.

Mr. Margolis: I just wanted to say this, your Honor, to ask your Honor to state to the jury that our contentions will be made by us in argument and your Honor is only assuming what we might contend.

The Court: That is correct. Both sides will contend that the evidence should or does prove one thing or another, and when I admit it I have to take into consideration the possibility of what it might prove. When I make a ruling on the evidence, as I indicated to you at the beginning, I

(Testimony of Jeff Kibre.)

have heretofore, I do now again and I will at the conclusion, instruct you that I do not intend to indicate what weight by shall give the evidence or whether it proves anything or whether it does not, that that is up to you.

Mr. Margolis: Ladies and gentlemen of the jury, I should like to read to you from that portion of Exhibit 228 which has now become Defendants' Exhibit V, which was omitted in the presentation of the exhibit by the government, that committee being strike membership minutes of Local 36, International Fishermen & Allied Workers of America, June 15, 1946, Fishermen's Coop Building, San Pedro, California. [2666]

Now most of these minutes have already been read to you by the government. I am just going to read that part that was not read.

There is a portion which was read to you which indicates that Brother Kibre is speaking and explains that he was in the Gulf and then goes on to say certain other things. Since that was read to you before I am not going to repeat it, but I am going to carry on where the part ended that was read before.

(At this point counsel read the portion marked Defendants' Exhibit V to the jury.)

Q. (By Mr. Margolis): Now following this union meeting of June 15, 1946, a portion of the minutes of which I have just read, did you have another meeting with any of the fish dealers?

(Testimony of Jeff Kibre.)

A. It wasn't exactly a meeting, but I did get hold of some of the fish dealers and talked to them.

Q. When was that, approximately?

A. It was the meeting that you have just read the minutes of, it is the meeting which is referred to by those minutes. I knew that meeting took place on a Saturday and I know that I got hold of one of the dealers the following Monday or Tuesday, I know it was the first of the week following.

Q. Within several days after the meeting of June 15th?

A. That is right. [2667]

Q. Where was this discussion held?

A. As I recall, it was in the little restaurant right across the street from the fishermen's wharf there, where all the dealers are. There is a little restaurant right across the street.

Q. At the time the discussion took place, who was present?

A. Well, there were a couple of dealers, one of whom I know quite well by the name of Red. He is the owner of the State Fish Company. I don't know his last name. It is some kind of an odd Italian name. I know him by the name of Red, and everybody around the fish wharf calls him by that name.

Q. Has he been in the courtroom?

A. No, he has not been in the courtroom.

Q. Is he still out there?

A. He still controls the State Fish Company and the present manager of the State Fish Company is, I think his nephew, who was in the courtroom yesterday, a chap by the name of Sammy.

(Testimony of Jeff Kibre.)

Q. Who else was present?

A. I don't recall the name of the other dealer at all. I know he was just sort of hanging around. It was purely an informal meeting, I might say.

Q. Tell us what was said.

A. Well, I asked Red, or rather Red asked me, he said, [2668] "Why don't we wind this thing up?"

So I said, "Look, we worked out an agreement to completely end it all the first of last week and it was our understanding that that was to be the basis for completely settling this dispute, and it was in that sense that we recommended to the membership that they accept the agreement. Our membership accepted it, and we were fully of the understanding that that was the end of it, and even your attorney, Mr. Ekdale, told us when we worked out the agreement in his office that everything was okay, he was going to recommend to you that you accept it and that that be the end of it. That was the following Wednesday and now we are the ones who are wondering." And I said, "Red, what happened? Did Ekdale change his mind or did you bring in another lawyer, or what, because that is what we would like to know, is why after Ekdale had agreed that the agreement that we worked out was entirely acceptable and, as you know, Ekdale is pretty sharp on the antitrust question, and he himself stated that it was entirely satisfactory, as he put it, why within a matter of a couple of days does the whole situation change and does the agreement now become unacceptable?"

(Testimony of Jeff Kibre.)

So Red says, "Well"—he sort of shrugged his shoulders and said, "I don't know. Ekdale is handling all of that and whatever he put in the letter is what we stand on."

And that was about it. [2669]

Q. Did you ever find out from any of the dealers what happened?

A. I never got anything except that the matter was entirely in Mr. Ekdale's hands.

* * *

Mr. Margolis: If your Honor please, I would like to offer the omitted portions of Government's Exhibit 233.

* * *

The Court: Where is the letter that this refers to?

Mr. Margolis: I intend to offer it, your Honor. It is not in evidence.

(The document referred to was passed to the Court.)

* * *

The Court: This in turn refers to some other document. In other words, before I rule on the minutes, it refers to a letter, so I want to see the letter, what the letter is, because you will be offering that next, and when I read the letter the letter refers to something else.

* * *

Mr. Margolis: We will be very happy to offer it.

* * *

(Testimony of Jeff Kibre.)

Mr. Rubin: There is no objection, and if your Honor admits the minutes we will certainly make no objection to the letter. The appendage to the letter, the resolution, we submit is completely immaterial and we will certainly object to that vigorously if that is offered. We will not object to the letter itself going in. [2671]

* * *

The Court: I think you are right. It is pretty hard for me to see how this resolution here can have any materiality or any probative value in connection with the issues that are involved in this case. I think therefore that the ruling will be to admit the minutes, the omitted portion of the minutes, and all of the letter except the last sentence.

* * *

The Court: The omitted portion of the minutes will be W, the letter will be W-1, and will be in evidence except for the last sentence and the enclosure in the letter will be W-2, which will be marked for identification and not admitted. W and W-1 are admitted.

(The documents referred to were received in evidence and marked Defendants' Exhibit W and W-1 respectively.) [2672]

(The document referred to was marked Defendants' Exhibit W-2 for identification.)

Q. (By Mr. Margolis): Mr. Kibre, these minutes which are in evidence in part as Government's Exhibit 233, and in part Defendants' Exhibit W

(Testimony of Jeff Kibre.)

are minutes, are they not, of a meeting of June 28, 1946, of the strike committee?

A. That's right.

* * *

Q. Were you present at that meeting?

A. I was.

Q. Now, the omitted portion which has now been admitted into evidence reads: "Moved, seconded and carried to send letters to San Pedro fish dealers, dated June 28, 1946, stating our new position. Moved, seconded and carried that the letter as written be sent to the butchers union Local 551 A. F. of L. thanking them for their cooperation."

I show you Defendants' Exhibit W-1 and ask you whether or not that is the letter to be sent to the dealers to which the motion I have just read refers.

A. It is, yes.

Q. And that letter was sent to the San Pedro fish dealers?

A. It was sent to all the San Pedro fish dealers.

* * *

At this time, ladies and gentlemen of the jury, I would like to read to you Defendants' Exhibit W-1, except for the portion which the court has ordered omitted, and which the witness has testified to that referred to the minutes of June 28th. This is a letter on the letterhead of International Fishermen & Allied Workers of America, Local 36, Berth 73, San Pedro, California, dated June 28, 1946, and addressed to San Pedro Fish Dealers.

"Dear Sirs: [2675]

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): Mr. Kibre, during the month of June 1946 what, if anything, happened with regard to the availability of albacore in the waters of Southern California?

Mr. Rubin: That is objected to as being incompetent, irrelevant and immaterial, and ambiguous and uncertain, calls for an opinion and conclusion of the witness.

Mr. Margolis: It is a preliminary matter, your Honor.

The Court: It is ambiguous and uncertain.

Mr. Margolis: I don't want to be accused of leading the witness, your Honor. I can make it much more certain, but then I will be accused of leading the witness.

The Court: The objection is overruled.

A. For one of the few times in history albacore showed up in local waters about the middle of June.

Q. (By Mr. Margolis): What do you mean by "showed up"? Can you explain that? Isn't there albacore in the water all the time? [2677]

A. By the way, albacore are a member of the tuna family and are known as the white meat tuna. It is the highest grade tuna.

Q. Is that chicken of the sea tuna?

A. Originally Chicken of the Sea was based on the use of albacore, the whitest meat tuna that there is. However, albacore disappeared late in the 20's, and subsequently Chicken of the Sea was based on the next grade tuna, which is yellow fin and blue fin tuna. Only recently in the last half dozen years

(Testimony of Jeff Kibre.)

have albacore reappeared in local waters. Now, that explains—in other words, albacore are a migratory fish, and they show up—that is, they migrate in various areas of the ocean which are completely unknown as yet by any scientists. The only thing we know, occasionally and from time to time they do appear in the waters off of Southern California, and at various other places up and down the West Coast clear into British Columbia, in fact. Generally, the albacore appear, when they do appear, about—well, generally after July 4th, around the middle of July; so that when they appeared on this occasion in 1946 in the middle of June it was really something extraordinary.

Q. I notice here in the minutes of June 12, 1944, the statement: "Telephone report one albacore in Avalon at 5:30 p.m." Can you explain what that means? [2678]

A. Well, I will tell you. When albacore show up it is pretty much like the gold rush in Alaska. Albacore are really gold to the fishermen. They are the gold of the sea. When albacore show up the fishermen get the word around like an old sourdough gets the word of a gold strike around. When one albacore shows up, it is really news to the fishermen.

Q. It is an indication that there are probably other albacore around? A. That's right.

Q. So what happened following June 12, so far as fishing is concerned?

A. There was a rush to get the bus ready to go out albacore fishing.

(Testimony of Jeff Kibre.)

Q. Incidentally, do the fishermen who fish fresh market fish fish albacore?

A. Oh, yes, yes, yes.

Q. What has happened when there have been albacore—when albacore has been present with regard to fishing other types of fish?

A. When albacore show up the fishermen leave every other type of fish and go after the albacore.

Q. Not all of them, is that right?

A. Well, a few of them might continue to fish fresh market fish, because they figure all the other fishermen are going after albacore, and therefore they will continue with [2679] the fresh market fish and make a good thing out of it. But generally speaking when the albacore show up every small boat in Southern California that can go out fishing, and that includes a lot of non-commercial fishermen who suddenly become commercial fishermen overnight, go after albacore. It is literally a gold rush.

Q. Is albacore sold to the canneries or the fresh fish market?

A. It is sold almost entirely to the canneries, although the fresh fish markets do buy a small portion for fresh market use.

Q. Following June 12, 1946, what happened this year in 1946 after June 12th with regard to the small boats in San Pedro?

A. They all went after albacore.

Q. Did the albacore run continue through the month of June, or did it stop before the end of June?

A. No, it continued.

(Testimony of Jeff Kibre.)

Q. And beyond that?

A. Yes, yes, on into July and beyond that.

Q. And this business of the small boats in San Pedro fishing albacore, did that continue through the month of June?

A. Yes.

The Court: And July? [2680]

The Witness: Yes. Virtually every small boat in Southern California that was seaworthy was putting out to sea for albacore. And a lot of them that weren't.

Q. You mean a lot of boats that weren't seaworthy?

A. Yes, that weren't seaworthy.

Q. Mr. Kibre, I think you have already testified—this is preliminary—that members of Local 36 include fishermen, working fishermen who own boats and working fishermen who do not own boats?

A. That is correct.

Q. Do you know approximately what percentage of the local are fishermen who own boats and what percentage are fishermen who do not own boats?

A. We have a rough idea based on the union records and from general knowledge of the fishermen that about— [2681]

* * *

A. About 60 per cent of the members of Local 36 do not own boats and merely work on the boats. That percentage may be higher.

Q. (By Mr. Margolis): During the war years and while the War Labor Board was in existence did you have any dealings with the War Labor Board as a representative of the Fishermen's Union?

A. A great deal.

(Testimony of Jeff Kibre.)

Q. Will you tell us the nature of those dealings?

Mr. Rubin: Just a moment. If your Honor please, that is clearly immaterial and I believe your Honor has so ruled this morning.

The Court: Objection sustained.

Mr. Margolis: This is one of the activities of the union, your Honor.

The Court: Objection sustained.

Mr. Margolis: I will ask your Honor that this War Stabilization Board ruling of August 23, 1946, be marked for identification as Defendants' Exhibit next in order.

The Clerk: X.

(The document referred to was marked Defendants' Exhibit X for identification.) [2682]

* * *

Mr. Margolis: I have two of them here. And a copy of the Panel of the War Labor Board, dated February 19, 1945, be marked. [2683]

* * *

The Court: X-1.

(The document referred to was marked Defendants' Exhibit X-1 for identification.)

* * *

Mr. Rubin: We will stipulate that the document is what it purports to be, Mr. Margolis.

Mr. Margolis: Both of these, X and X-1?

Mr. Rubin: Yes. There will be no question about that.

Mr. Margolis: Then I will offer them.

(Testimony of Jeff Kibre.)

Mr. Rubin: We object, if your Honor please, on the ground that they are incompetent, irrelevant and immaterial.

* * *

The Court: Objection sustained.

Mr. Margolis: Will you mark this Defendants' Exhibit Y?

(The document referred to was marked Defendants' Exhibit Y for identification.) [2685]

Q. (By Mr. Margolis): Mr. Kibre, are you familiar with the constitution of Local 36?

A. I am.

Q. Did you have a hand in helping to draw it?

A. I drafted the constitution.

Q. It was thereafter approved by the membership?

A. It was.

Q. I show you Defendants' Exhibit Y for identification and ask you whether or not that is a true and correct copy of the constitution of Local 36.

A. Yes.

The Court: I thought that was already in evidence.

Mr. Rubin: That is of the International.

Mr. Margolis: We have the constitution of the International. This is the constitution of the local.

The Court: Very well.

The Witness: Without examining it clause by clause I would say this is a copy. I am familiar with the mimeographed copy that they did put out, and this is it.

(Testimony of Jeff Kibre.)

Mr. Margolis: Your Honor please, at this time we offer Defendants' Exhibit Y for identification in evidence.

Mr. Rubin: That is objected to as being self-serving, not tending to prove any of the issues of this case. It is not what an organization says it is, it is what they do. [2686]

The Court: The objection is overruled. The document is admitted in evidence. Are you going to read this now?

Mr. Margolis: I am going to read portions of it, and the rest, of course, will be available to the jury. I don't deem it necessary to read the entire document. I think I can finish up in about five minutes reading the portions that I want to read.

The Court: Very well.

(The document referred to was received in evidence and marked Defendants' Exhibit Y.)

Mr. Margolis: Ladies and gentlemen of the jury, this document which is now in evidence as Defendants' Exhibit Y is labeled "Constitution and By-Laws, IFAWA, Local No. 36."

(At this point counsel read portions of Defendants' Exhibit Y to the jury.)

Mr. Margolis: At this time I am through with the witness and you may cross-examine.

Mr. Rubin: Are the by-laws attached to that exhibit? [2687]

(Testimony of Jeff Kibre.)

Mr. Dixon: May they go in at the same time?

Mr. Margolis: My copy doesn't have the by-laws attached. The Witness: They use the same by-laws that Local 33 uses. The by-laws are taken out of the published booklet of Local 33's constitution.

Mr. Rubin: You may have our copy if you want to and then you can substitute a copy later.

Mr. Margolis: Very well. We will agree that the by-laws may go in.

The Court: That is the constitution and by-laws now, is that right?

Mr. Margolis: That is right. [2688]

* * *

Cross-Examination

By Mr. Dixon:

Q. Mr. Kibre, you are a member of the International Fishermen & Allied Workers of America, I presume?

A. I am a member of Local 34 of the International Fishermen & Allied Workers.

Q. And when did you first become a member of that local?

A. I became a member in 1940, in the fall, when I was hired by the International to become their representative.

Q. Local 34 is one of the affiliated organizations of the national organization, is it?

A. That's right. It is located in San Francisco.

Q. With headquarters in San Francisco?

A. That's right.

(Testimony of Jeff Kibre.)

Q. Are you acquainted with the type of membership of that local at all? A. Yes.

Q. That is what kind of fishermen or workers are members of it? [2689] A. Yes, I am.

Q. Will you tell the jury what they were at the time you joined?

A. The members of Local 34 in San Francisco?

Q. That's right.

A. Yes, the membership of Local 34, which is located in the Port of San Francisco, consists of fishermen on purse seiner vessels, that is, large vessels; it consists of crab fishermen on small boat who work—that is, work on a boat themselves or one or two men on a boat; and small trolling boats that fish salmon, again boats operated by one or two men. Sort of diversified membership.

Q. It consists entirely, I take it from your answer, of fishermen who either own and operate their own boats or work on boats, is that correct?

A. It consists entirely of working fishermen, yes.

Q. Prior to the time you joined this union, had you ever been employed by anyone engaged in the fishing industry?

A. No, I had not. That was my first experience.

Q. Had you ever engaged in the business of commercial fishing for purposes of receiving money with which to make your living?

A. As I explained to his Honor on one occasion, the only experience I had in fishing was sport fishing prior to the time I became a member. [2690]

(Testimony of Jeff Kibre.)

Q. So that prior to the time you became a member of Local 34 in San Francisco you had had no experience in the fishing industry either as a fisherman or as one connected with anyone engaged in the fishing business; that is correct, is it?

A. That is correct.

Q. I will ask you to examine Exhibit J, which is the constitution of the International organization, and state to the court and the jury what provisions, if any, there are in Exhibit J concerned with qualification for membership in the International Fishermen & Allied Workers of America or any of its local units.

A. This is the constitution of the International. The International, of course, does not control——

Q. I understand. I am asking, Mr. Kibre, for you to tell the jury, after you have examined the Exhibit J, whether you find any provisions therein relating to the qualifications for membership in this organization, either as International or such regulations as may be imposed by the International on local organizations chartered by the International.

A. I better take a good look at it. I haven't re-read the constitution completely. There is nothing in the International constitution that determines the eligibility for membership with regard to the local affiliates.

Q. You say you do not find any such requirement in the constitution?

A. I say, as far as I know—I haven't completely reread the constitution.

(Testimony of Jeff Kibre.)

Q. You are the secretary and treasurer of this organization, as I understand it, is that correct?

A. That is correct.

Q. And you say you don't find any provisions in your constitution relating to the qualifications for membership of any local that may be chartered by your national organization?

* * *

A. I am just glancing over it again.

The only provision that I know of in here which touches on that point is Article 5, application for membership in the International on the part of local affiliates, and that goes [2692] on to say that the application, that is, the application for a charter, "Any organization desiring to affiliate with the International Fishermen & Allied Workers of America shall first make application to the secretary-treasurer. The application shall be accompanied by the regular initiation fee and a statement setting forth the total membership directly employed in connection with the fishing industry."

Q. That is Article 5? A. Yes.

Q. As secretary and treasurer of this organization, do you regard this section as requiring members of local units, chartered by your organization, to be directly employed by someone in connection with the fishing industry?

A. As I say, the eligibility on the part of local affiliates is left up to the locals. This is a technical qualification relating to the issuance of a charter.

(Testimony of Jeff Kibre.)

Q. That is the standards, is it not, in so far as this constitution has any standard for qualifications for membership in any locals of this organization?

A. That is simply a technical classification by which the group applying for a charter sets forth the number of applicants who are employed in their application to the International executive board which passes on the application for a charter.

Q. So so far as you are concerned as the secretary and [2693] treasurer of this organization to whom applications for charters must be made, the language of Article 5 containing the words "directly employed in connection with the fishing industry" do not have any particular meaning, is that correct?

* * *

The Witness: Yes, I will say certainly it has, but I would like to explain my answer.

* * *

The Witness: This is what it means, it simply means this, that a group of people somewhere made application to the International for a charter. They may be fishermen, they may be shore workers, they may be employed in a fish house, they may be employed in a fish cannery, and those who make an application simply list the names of the persons who are making the application so that we will know in effect who are making the application, who the persons are, and that is all the meaning it has, as far as the International executive board is concerned, is to know that the persons making the application are working in the fishing industry.

(Testimony of Jeff Kibre.)

Q. (By Mr. Dixon): Now directing your attention to Article 2, the word "fisherman" is used there. Does that have any particular meaning to you as secretary-treasurer of the association?

A. Fisherman means persons who are working at the occupation of catching fish.

Q. Does it also include—I see the words here "allied [2695] workers." Would the term "fisherman" first include under your constitution and your interpretation of it men who own and operate their own boats engaged in the catching of fish for purposes of sale to dealers?

* * *

The Witness: Yes, and I would again like to explain that a little bit more fully.

Q. (By Mr. Dixon): All right. Will you explain then what you mean by "fishermen" who are in that class?

A. The term "fisherman" as used here certainly might mean a fisherman who operates a small boat by himself and simply works by himself on the boat. In fact, most of the fishermen in the Columbia River area work on the basis of one man to a boat, and a large proportion of them own the boats, and they are all members of the union.

The terms also of course means fishermen who work on large boats in groups.

Q. So that your organization doesn't, and you as secretary [2696] and treasurer of that organization don't, make any distinction in the membership of your organization between fishermen who may

(Testimony of Jeff Kibre.)

own and operate their own boats for the purpose of catching fish for sale to buyers and persons who may work on fishing boats as such, is that correct?

A. Again I must repeat that the eligibility is determined by the local.

The Court: Just a minute now. I think you can answer the question yes or no.

Read the question.

(The question referred to was read by the reporter as set forth above.)

The Witness: No, we don't make any distinction, but again I want to explain that.

Mr. Dixon: I think you have answered my question, that there isn't any distinction made.

* * *

The Witness: We do make—it is a matter of wording—we make a slight distinction.

The Court: He says he does make a slight distinction. [2697]

The Witness: Because I couldn't gather from your question whether you referred to fishermen who do not actively work on boats and we do make a distinction, that is, the International executive board, oh, a year and a half or two years ago, did urge the locals not to admit into membership such persons even though they owned and operated the boat who did not actively work on the boat at the occupation of catching fish. I just wanted to get that clarification. [2698]

(Testimony of Jeff Kibre.)

Q. Well, if I understand it, then, a man who owns and operates his own boat may be a member of one of your local organizations, is that correct?

A. Yes, that is correct.

Q. And he may be a member even though other persons are on the same boat with him engaged in the business of catching fish for the purchase and sale to markets, is that correct?

A. That is not entirely correct, no.

Q. It is a fact, is it not, Mr. Kibre, that that is precisely what the membership of Local 36 is composed of, isn't it?

A. As far as I know the membership of Local 36 is composed of fishermen who do not own boats, and a number of fishermen who either partially own or may own small boats.

Q. So that in the same organization, I mean the same local, your national organization permits the local organization to have in its same membership men who own and operate fishing boats or engaged in the business of commercial fishing, and individuals who work on those boats, is that correct?

A. Yes, sir, as I have stated.

Q. Now, I believe you testified on direct examination that you excluded boat owners from Local 33 some time in 1938 or '39? This was before your time, I believe, but you testified that you were familiar with that from the records. [2699]

A. I don't think I stated it in that manner. I think that I probably said that Local 33 does ex-

(Testimony of Jeff Kibre.)

clude from its membership the owner or a boat owner on each boat. That is, each large purse seine boat.

Q. Well, do you exclude him even though he may be the captain and operator of the boat, as well as the owner of the boat?

A. Understand me, I mean this is something that the local union has done and did long before my time.

Q. You are secretary-treasurer, are you not? Do you know, Mr. Kibre, of your own knowledge as to whether they do or don't?

A. As far as I know, and I can give you I think a fairly clear picture of the situation as it applies to Local 33 because I have been quite familiar with it, the non-union member on each purse seiner is generally the person who is known as the owner of that particular fishing boat. Actually that particular so-called owner is generally only owner in part, and the largest portion of the ownership is controlled by the cannery, and I am sure the local excluded that person from membership because that person is pretty close to the cannery and is guided by their interests.

Q. That is on your assumption?

A. That has been explained to me by the local membership. [2700]

Q. He is paid on the same basis, generally, is he not, as the other members of the crew of the boat on which he is the captain?

* * *

A. Yes, he gets his share.

(Testimony of Jeff Kibre.)

Q. In other words, the captain of the boat gets a share of the lay when the fish is sold, and the other persons working on the boat with the captain also get paid on a share of the lay basis, is that correct? A. That is correct.

Q. So, so far as their payment is concerned, they are both in the same position, is that right?

A. Not entirely, no.

Q. Well, is there any difference between the manner of payment of a captain of a boat whom you exclude from membership, and the others who are members of the crew?

A. As far as the actual share which goes to the working crew, he participates. [2701]

* * *

The Court: Can you answer that yes or no, or do you know?

The Witness: Yes, as far as I know the boat owner who is known as the boat owner on the boat may receive additional compensation over and beyond what the crew members, the actual crew members or union members, receive.

Q. I am speaking now of a situation, Mr. Kibre, where the boat captain is also the boat owner, to see if that wouldn't make any difference in your answer. We realize the owner of the boat may also have a share of the lay, but that only changes the amount that he might get as owner of the boat.

A. The fishing captain, that is, the man who may be known as the fishing captain on the boat, and who often may simply be an ordinary crew member

(Testimony of Jeff Kibre.)

with no ownership in the boat whatsoever, receives the same compensation as the other members.

* * *

The Court: What he wants to know is whether or not a man who owns the boat, works on the boat, a purse seiner, and runs the boat as captain, if he gets any different compensation [2703] than the share of the lay. He might get a share of the lay for owning the boat, and he might get a share of the lay for being a crew member?

The Witness: Maybe I can just take a moment to explain this, your Honor. You see, there is a confusion in terms here. The captain may not and very generally is not the actual owner of the boat on a purse seiner. The captain is the one——

The Court: He wants to know where he is the owner.

Mr. Dixon: That's right.

The Witness: There is simply one, as I said before, one member working on the boat according to the agreement, that is, as Local 33 operates, who is known as the boat owner, and he receives, when he works on the boat as a crew member, or works and participates in the fishing operation, he receives, first of all, his share of the catch, the same as the other crew members, and he may receive, then, additional compensation from the boat share.

Mr. Dixon: That is right.

The Court: That is the boat share?

The Witness: That is correct.

The Court: I see.

(Testimony of Jeff Kibre.)

Q. (By Mr. Dixon): The captain who is the owner of a purse seine cannot be a member of your organization, as I understand it, is that correct? —he was excluded from [2704] membership?

A. Yes, the membership of Local 33 have excluded the one boat owner on each vessel.

Q. In Local 36 you permit the owner, I believe, to be a member of your union, is that correct?

A. The membership of Local 36 take in the so-called boat owners on the small boats into their membership.

Q. So that the distinction there between the two seems to be an arbitrary one, or is there some other explanation that you can give for it?

* * *

A. The only explanation that I can give is the explanation that has been given to me by the membership of Local 33, which I tried to point out previously, that on the purse seine vessels, which are large vessels, and have a large investment from, say \$50,000 to \$75,000 to \$100,000, the boat owner on those vessels is generally very closely tied to the cannery which has financed the construction of the boat, and the fishermen, therefore, feel that such a person should not be in the membership of the union. [2705]

* * *

Q. (By Mr. Dixon): It is a fact, is it not, Mr. Kibre, that even though the owner owns his boat in its entirety and operates it with other fishermen, that under those circumstances he may not be a member of Local 33?

(Testimony of Jeff Kibre.)

A. That's right, pursuant to the custom of the local.

Q. But in Local 36 the situation is different, even though he owns and operates his own boat he may be a member [2706] of Local 36?

A. That's right? [2707]

Q. Now as secretary and treasurer of the International, will you state to the jury what the sources of income of the International organization are?

A. Yes. Our income is based on an obligation on the part of each affiliate to pay to the International a per capita tax of \$3 for each member per year. That os the source of our income.

Q. Does it have any other sources of income apart from the dues or amounts paid to it in the form of dues from the local organizations chartered by the International?

A. That is our only source of income, is the per capita. Of course the constitution does provide for assessments from time to time which may be levied by referendum vote. That is the only source of income.

* * *

Q. As secretary and treasurer of the International you are, I presume, also familiar with the sources of revenue of all of the locals chartered by your International?

A. Not entirely; no.

Q. Don't you as secretary and treasurer receive financial reports from those organizations disclosing the source [2708] of their income?

(Testimony of Jeff Kibre.)

A. We receive financial reports—in fact, each year now we receive a financial report setting forth the total income, the total disbursements, which enables us to file our tax report pursuant to the new law. And, generally speaking, we have a fairly good knowledge of the method by which the locals collect dues and the rate of dues. But we don't have complete information. It is not required. Technically they should furnish it to us, but if you have ever run such an organization as ours, we don't get the exact information.

Q. To your personal knowledge do you know whether any of your locals have or receive any income from sources other than the dues of their membership?

A. Their only source of income, as far as I know, is the dues which they obtain from the membership or in the event that they also may levy an assessment upon that membership as provided by the local constitutions.

Q. And if there were any other sources of income I presume as secretary and treasurer you would immediately note that in reports received from your locals, is that correct?

A. If we get the reports, we certainly would.

Q. Do you know, or have you ever received, any reports from any locals showing income from sources other than dues of the members of your local chartered by your International? You can answer that yes or no, Mr. Kibre. [2709]

A. No. I would like to explain.

(Testimony of Jeff Kibre.)

The Court: Do you desire to explain the question?

The Witness: Yes. When the locals send in their per capita payment, it is on a form wherein they fill out the total number of dues-paying members, the total amount of dues paid, and the amount of per capita that is being remitted. That is the monthly form that they fill out, so that we wouldn't know exactly whether they have obtained any income from other sources. We simply take it for granted that they operate and collect their dues in the regular manner.

Q. (By Mr. Dixon): I take it then, as far as you are concerned, from your personal knowledge as secretary and treasurer of the International, you know of no sources of income of any locals other than the dues of the locals? A. Yes.

Q. Will you state to the jury what those sources are?

A. As I understand it, many of the locals have a permit system, for example the Alaska Fishermen's Union, whereby a new applicant who has applied, instead of becoming a member of the union until he has proven himself and proven he [2710] likes the industry and is going to stick to it, may simply be a permit member, and may pay \$5 or \$10 for a permit. That is one source of income other than regular dues.

Most of the local constitutions provide that an applicant who becomes a permanent member may

(Testimony of Jeff Kibre.)

then apply that permit fee to his regular initiation fee. That is one source of other income.

Q. Are there any others, Mr. Kibre, to your knowledge?

A. The only others would be when a local levies a special assessment, for example, if a local is engaged in a strike they may levy some special assessment on the membership to raise strike funds.

And from time to time, for example, there are voluntary assessments. They may collect a dollar for the PAC program, for the Political Action Committee program. For example, in conformity with the national CIO program——

The Court: What is a voluntary assessment? How can an assessment be voluntary?

The Witness: That is where the local simply goes on record—well, let's take the PAC, that is, the Political Action Committee, if they decide that the membership should participate in it and calls upon the membership, if the membership so desire, to contribute a dollar per member. That is a voluntary assessment. Many of the locals, for instance two years ago in northern California, the locals up there raised [2711] \$2 per member to undertake a research study of the Table Mountain Dam problem. That is where the Army engineers were planning to build a dam which would have completely destroyed the salmon resources of northern California.

(Testimony of Jeff Kibre.)

The Witness: Those are the ones that have come to my attention. There may be numerous others on the part of locals for any special purpose that they so desire. They have complete autonomy, under our constitution, complete autonomy.

Q. (By Mr. Dixon): Now directing your attention to Local 36, are you particularly familiar with that organization and the sources of the revenue of that organization as secretary and treasurer?

A. I am, yes, generally speaking, I would say.

Q. Can you state to this court and jury what the [2712] sources of income of that organization are?

A. Well, as far as I know, from their regular dues, which they haven't been collecting too much because they haven't paid their per capita for the last six months——

Q. I am just asking what the sources of the income are now.

A. As far as I know, their dues structure is \$2 a month. I think that is the source of their income.

Q. Do they to your knowledge have any other source of income other than the dues of the membership of that organization?

A. Well, they probably issue permits. They may have had voluntary assessments.

Q. That would be the membership applications?

A. Yes.

Q. Are there any other sources to your knowledge than that?

A. Oh, maybe this is it. I understood that during the strike—I wasn't around but I understood

(Testimony of Jeff Kibre.)

that during the strike—they had a strike fund and that they were raising funds by donations and every other way they could raise funds for their strike fund.

Q. So far as you know, as secretary and treasurer of the International, the sources of income of Local 36 are as you have described, namely and principally, from membership [2713] dues and such levies and assessments as may have been made upon the members of that organization, is that correct?

A. Yes.

Q. Do you know whether that organization has ever engaged in the business of buying or selling gear to the members of this organization, fishing gear?

A. I really don't know.

Q. Well, if they had would that have been brought to your attention, as secretary and treasurer of the organization?

A. I seriously doubt it. It is not a matter within our province, that is, the province of the International.

Q. Is it a matter of interest to your International organization whether or not Local 36 would be engaged in the business of, say, buying and selling commercial gear to be used on the boats for the members of that organization at wholesale prices?

A. That is a matter that would be entirely up to the local.

Q. And there is nothing in your constitution, I believe, or is there anything in the constitution, which would cover that sort of activity?

(Testimony of Jeff Kibre.)

A. Not in our International constitution, although we do encourage locals if they want to set up buyer co-operatives to go ahead and do so so that they could buy gear at cost. [2714]

Q. But to your knowledge you know of no such activity having been undertaken by Local 36?

A. No, not of my own knowledge.

Q. Have you been rather closely associated with them in this area during the last two years?

A. Well, from time to time——

Q. Have you or haven't you?

A. Not too closely.

Q. All right. You you know when the charter was granted to Local 36?

A. The charter was granted originally to Local 36 in November of 1940, if I recollect correctly.

Q. 1940? A. That is right.

Q. That was the time you became what, International representative?

A. That was shortly, a couple of months after I became representative; yes.

Q. And I believe you testified your duties as International representative were to organize or aid in the organization of the fishing industry?

A. To aid in the organization of fishermen and all those under the jurisdiction of the union. That was part of my duties.

Q. In that connection, did you have occasion to aid in [2715] the organization of Local 36?

* * *

(Testimony of Jeff Kibre.)

The Witness: Yes.

Q. (By Mr. Dixon): When did you render such assistance in organizing Local 36?

A. Oh, on several occasions.

Q. To be specific, can you tell the jury when you first began to organize them from the point of view of whether it was 1940 or '42 or '43, or when it was?

* * *

A. Local 36 was first chartered as Local 36, although it had been part of a previously organized union that was first chartered in November of 1940, and I assisted the local [2716] at that time in getting set up under its new charter. That is about all. And then subsequently in 1943—

* * *

Q. Will you state to this court and jury what the type of membership of that organization was at that time, whether they were composed of boat owners or operators or what the composition was?

A. When the charter of Local 36 was issued it consisted of fishermen at Newport Beach, and those fishermen, as we term them, small boat fishermen, some of whom owned their boats, some of whom didn't own their boats.

Q. And that condition from the point of view of membership continued right down to the present time, is that right?

A. That is right. The membership at that time was pretty much the same as it is right now.

(Testimony of Jeff Kibre.)

Q. Now Local 36 was then in existence at the time of the Southern California small boat price conference, was it not, in January of 1944?

A. Yes.

Q. And you were present at that conference, Mr. Kibre, were you? A. Yes, I was [2717]

Q. Did you have anything to say at that conference with reference to taking united action to establish a solid foundation for uniform prices of fish sold by the members represented or present at that conference? [2718]

* * *

Q. I believe you actually called that meeting, did you not, Mr. Kibre?

A. I certainly did. I called that conference.

Q. And at the time the meeting was opened, did you explain that the meeting had been called to work out a coastwise schedule of minimum prices on fresh fish?

A. I stated that, but I would like to explain that because the minutes are inaccurate.

* * *

The Court: I think then that your counsel can straighten it out on redirect examination at the conclusion of the cross-examination. [2719]

* * *

Q. (By Mr. Dixon): And at that conference a minimum price schedule was agreed up, was it not——

* * *

(Testimony of Jeff Kibre.)

Q. —by the members represented by Local 36 as to what would be charged to the dealers?

* * *

Q. Is that correct, to the best of your recollection? A. Yes, sir, they agreed on a schedule.

Q. I believe you testified on direct examination that in August or July of 1944 you were aiding the union, that is, Local 36, in entering into a fish stabilization agreement with the Santa Monica Seafood Company and the Bay Fish Market, is that correct?

A. That is correct.

Q. I will hand you what has been marked for identification as Government's Exhibits 240 and 244 and ask you if those were the contracts in which you aided in their negotiation with those companies named.

A. Yes, these are the contracts.

Mr. Dixon: We offer these in evidence, your Honor.

The Court: Admitted.

(The documents referred to were received in evidence and marked Government's Exhibits 240 and 244.)

Q. (By Mr. Dixon): These contracts were negotiated and [2720] entered into, I believe, as part of the conditions of settlement of this controversy that you described on direct examination, is that correct? A. That's right.

Mr. Dixon: I would like to read at this time to the jury, your Honor, a portion of this contract, Exhibit 244.

(Testimony of Jeff Kibre.)

“3. It is further agreed that said fish dealers and processors and the company or companies signatory hereto fully recognize and agree with the doctrine of the ‘closed union shop’ and will neither employ nor purchase fish from any fishermen not at all times a member in good standing in the union.***”

And the same provision is contained in paragraph 3 of Government’s Exhibit 240.

Q. (By Mr. Dixon): Mr. Kibre, by the provision just referred to in this contract, the companies mentioned were prevented, were they not, from purchasing fish from non-members of your organization, Local 36? A. They were not.

Q. You say they were not?

A. No, because the clause provides only that after a fisherman sells his fish and continues to sell his fish, that then he shall apply to the union for membership, and the union will accept him into membership.

Q. In other words, if the dealer under the contract [2721] is buying from a non-member of Local 36, and it comes to the attention of Local 36, the dealer then can no longer buy from such non-member unless he becomes a member of Local 36, is that the exception to the rule in the contract?

A. Yes, if the local would notify the dealer who has agreed to abide by that provision, then he would refuse.

Q. At about the same time these two contracts were entered into that I have just shown you, I believe Local 36 was also active in endeavoring to at-

(Testimony of Jeff Kibre.)

tain similar contracts from other dealers, were they not. A. Not similar to these contracts, no.

Q. You mean this was not the same type of contract that you were submitting to other dealers at that time?

A. No, the contract that was being submitted to other dealers was purely a tentative agreement and did not contain any closed shop clause; it was primarily an agreement asking for recognition of the union.

Q. Can you explain to the jury why this provision was contained in this contract and not in the others?

A. Yes, because all of the fishermen in Santa Monica had joined the union and had gone on record for such a clause. They were all members and they felt that, therefore, the contract should provide a security clause for the union itself. As far as Southern California is concerned, when we were offering contracts to others dealers we didn't claim to [2722] represent all of the fishermen at all, we claimed to represent a substantial majority, and in the contracts that we presented to the dealers all we asked in those contracts was to be regarded as the representative of the membership of the union at that time.

Q. In the letters which were circularized by Local 36 in June 1944 to all the Southern California fish dealers set forth in your Exhibit O, you state that one of the purposes was to stabilize the fresh fish industry, is that correct? A. That's right.

(Testimony of Jeff Kibre.)

Q. And by stabilizing the industry you mean to establish minimum prices for all fish caught in this area which may be sold to the dealers in the area covered by Local 36?

A. That is not the complete meaning of stabilization as we used the term.

Q. Well, that is one of the meanings, isn't it?

A. That is one of the meanings, yes.

Q. There may be others, but at least that is one of them?

A. There are several other very important factors involved in what we mean by stabilization.

* * *

Q. (By Mr. Dixon): Now, in connection with this stabilization program referred to in Exhibit O, Mr. Kibre, were contracts similar to Exhibit 3 submitted to any of the dealers?

* * *

The Witness: The contracts that were submitted to the dealers were not the same as this particular contract at all. (Indicating) [2725]

* * *

The Witness: I think that the agreement submitted to those dealers in 1944 was based on this contract, but did not embrace all of the clauses in this contract at all. It was a tentative agreement intended to start a collective bargaining relationship between the union and the dealers.

The Court: Let me see if I understand you. The agreement submitted to the remainder of the dealers

(Testimony of Jeff Kibre.)

outside of Santa Monica in 1944 was not the same as the Santa Monica agreement? [2726]

The Witness: That is correct.

The Court: And it was not the same as Exhibit 3?

The Witness: That is correct.

The Court: All right.

The Witness: It did not contain a closed shop clause, and it was a very tentative agreement. I don't recall the exact wording of it.

The Court: All right.

Q. (By Mr. Dixon): And were you successful at that time in having all of the dealers covered by Local 36 area sign those agreements that were submitted to them at that time? A. By no means.

Q. All right. A. None of them.

The Court: None of them?

The Witness: That is correct.

Q. (By Mr. Dixon): Now, Mr. Kibre, I believe, passing to April 1946, you were present at a so-called Barracuda Conference; do you recall that? A. Yes, I do.

Q. That was April 18, 1946, is that correct, to the best of your recollection?

A. That's right.

Q. Were the prices or minimum prices to be charged by the fishermen who sold fish to dealers discussed at that [2727] conference?

A. At the Barracuda Price Conference? I don't recollect whether they actually went on record for

(Testimony of Jeff Kibre.)

specific prices, but certainly they were discussing the whole proposition of a minimum price agreement.

Q. And it was agreed at that meeting, was it not, by those present that the OPA ceiling price on barracuda would be maintained as the minimum price of all barracuda sold by the members represented at that meeting to fish dealers?

A. It was agreed at that meeting, which was——

Q. Was it or not? Can you answer that yes or no?

A. Yes, sir, it was agreed. I just want to explain——

* * *

A. It had to go to the membership. [2728]

* * *

Q. (By Mr. Dixon): Do you recall whether Mr. Bruce Martin made any comments concerning the discussion of fixing a minimum price at this meeting?

A. I certainly do. That is one thing I remember.

Q. By the way, you might tell this jury who Mr. Bruce Martin is. Will you do that, Mr. Kibre.

A. I don't know what he was at that time, it was the first time I ever saw or heard of him, but I understand now he is at the present time the manager of what is called the Commercial Fishermen's Co-operative Association, or something along that line, in Newport Beach. That was the first time I ever met him. It was what he said that stuck in my memory at the time.

(Testimony of Jeff Kibre.)

Q. Do you know whether he was there as a buyer of barracuda?

A. I don't know what he was doing there, to tell you the truth.

Q. Now, Mr. Kibre, do you know whether Local 36 had completed its organization at San Diego at the time of this conference?

A. In April? You mean the barracuda conference?

Q. Yes.

A. It has never completed the organization in San Diego, not up to the present time certainly.

Q. At least there was a unit there at San Diego?

A. Yes, there was a unit, about one-third or so of the total fishermen.

Q. All of the various ports to which Local 36 had units were represented at this barracuda conference on April 18, 1946, weren't they, Mr. Kibre?

A. As far as I know, yes.

Q. And do you recall whether any agreement was entered into among those present to endeavor to get the minimum price contract covering barracuda?

A. I recall those present, that is, the conference there, went on record urging the membership of the local to adopt a program to obtain a contract which would provide that the dealer would pay the OPA ceiling as the minimum price. [2731]

* * *

Q. Mr. Kibre, I believe when court recessed last Friday you testified that you were present at a bar-

(Testimony of Jeff Kibre.)

racuda conference held April 18, 1946, and that at that conference it was moved, seconded and carried that a contract be signed with all Southern California dealers making the ceiling price the minimum price, is that correct?

A. That is right.

Q. Was such a contract signed by the union or those present at the conference with all the Southern California dealers? A. I don't think so.

Q. Now I believe you also testified on direct examination that you attended some meetings in the latter part of April and early May of 1946, at which a general program to increase the general consumption of all types of fresh fish by the public generally was discussed, is that correct?

A. That is right.

Q. And all the dealers in Southern California were invited to attend that meeting, is that right?

A. We didn't invite the dealers. The Western Seafood Institute invited the dealers. We just simply contacted the Western Seafood Institute with the assistance of the Fish and Wildlife Service.

Q. In any event, all of the wholesale and retail dealers possible in Southern California that could attend that meeting were present, is that correct?

A. Yes. We urged the greatest possible participation. [2736]

Q. And at that meeting you discussed, I believe, ways and means of developing the general market for fresh fish in this area, is that correct?

A. Yes——

(Testimony of Jeff Kibre.)

Q. Insofar as consumption and use of fish by the public is concerned? A. Yes.

Q. And that included all types of fresh fish, did it not?

A. That was the proposition as we put it. Of course, there were certain species——

* * *

The Witness: There were certain species that came in for particular discussion, those species which were most [2737] abundant, such as rock fish from up north, and barracuda here in Southern California.

Q. (By Mr. Dixon): It is a fact, is it not, Mr. Kibre, that it was the purpose of this meeting to develop a taste generally for fish by the public, is that correct? A. That's right.

Q. And it was not intended primarily to confine that taste to fresh market fish caught in this area or shipped in from the north or the east coast, is that correct?

* * *

A. The way the question starts and the way it winds up—I know what I want to answer; the answer is we did not want to confine it to any species of fish or to any section of the country. [2738]

Q. That is right. That is, regardless of where the fish was caught the purpose of this meeting was to develop the use of all types of fresh fish by the public generally, is that correct?

* * *

The Witness: That is correct.

(Testimony of Jeff Kibre.)

Q. (By Mr. Dixon): Was that the same—by the way, what came of that program—anything?

A. As I stated the other day, we had two meetings prior to the time I left for the East, rather, for the Gulf, and then subsequently for the East, and I understand they had an additional meeting, and then the program that we proposed just seemed to evaporate in the air for lack of effective activity and co-operation on the part of the dealers.

Q. Well, this was to be financed, was it not, by the dealers and the fishermen and the wholesalers?

A. It was to be a joint program, which the fish and Wildlife Service was to participate—

Q. If you will answer my question. I will withdraw that. Who was to finance the program for the public eating more fish?

* * *

A. The government was to participate by supplying [2739] personnel and donating that, in fact, as their contribution; that is, through the Fish and Wildlife Service. The fishermen agreed, up north particularly where they had a little more money in their jeans than the fisherman down here, they agreed to raise an amount of funds which would be available to the committee down here for promotional advertising. And the dealers in the Northwest, also, agreed, at the suggestion of the government, by the way, to assess themselves and to make available an amount down here which would be available for promotional advertising. The difficulty—

The Court: No.

(Testimony of Jeff Kibre.)

Q. (By Mr. Dixon): Who else, if anybody, was to finance this program?

A. The local dealers were also to participate in raising funds, and that is where it broke down.

Q. Did the people up North——

The Court: You say the local dealers?

The Witness: The local wholesalers and dealers.

The Court: Not the fishermen?

The Witness: The local fishermen, even the dealers admitted they didn't have enough money in their jeans to make any money available.

Q. (By Mr. Dixon): Did anyone furnish any money to carry out this program that you have just described?

A. The only money that was actually put on the line was [2741] I think, \$2500 which the northern dealers stated was available whenever the program would get under way, and also the money from our northern auto trawl fishermen. They actually passed the program in their union meeting and agreed on the assessment. I think it was a quarter of a cent a pound.

Q. To whom was this money turned over, Mr. Kibre?

A. This money was not turned over to anyone, because the program just simply broke down.

Q. And it is a fact, is it not, that no one ever paid in any money to anyone to carry on this program that you described; that is a fact, isn't it?

A. There was no program to pay it into. The money was not paid, of course not.

(Testimony of Jeff Kibre.)

The Court: All right.

Q. (By Mr. Dixon): So nothing further ever came of the program?

A. Well, I stated the other day that I did talk to the government personnel about it, Ralph Russell, and nothing came of it because, as Ralph Russell and the other Fish and Wildlife people put it, the dealers weren't really interested in developing an over-all program.

Q. That is your view of it, is that right? Because the dealers didn't put in their money, why nothing further came of it?

A. It was not solely a question of funds or money. [2741]

Q. And you did nothing further, that is, Local 36 did nothing further with this program after these meetings that you have testified, is that correct?

A. Other than the minimum activity that we always carry on, and that is primarily through the unions in the area advertising fish and publicizing.

Q. That is, advertising fish in your newspaper, the International Fishermen's paper?

A. And also through other unions connected with the CIO. That is, we always carry on that activity.

Q. It is a fact, is it not, Mr. Kibre, that Local 36 does not own or lease or operate any dockage facilities for its members?

A. That is right.

Q. It is also a fact, is it not, Mr. Kibre, that Local 36 does not own, lease or operate any processing plants itself for the use of its members?

A. That is right.

(Testimony of Jeff Kibre.)

Q. It is also a fact, is it not, Mr. Kibre, that Local 36 does not own or operate any storage plants for storing or icing the fish of its members?

A. That is right.

Q. Now coming to these meetings that you testified to, had on or about June 10, 1946, those meetings were of a different type—I will withdraw that.

At those meetings the Los Angeles dealers were not present, were they? A. No.

Q. The meeting of June 10, for example, was solely with the dealers against whom the picketing was going on in the San Pedro area, is that correct?

A. That was with the San Pedro fish dealers.

Q. At that meeting there was no discussion about increasing or carrying on this program that you previously referred to, was there?

A. Yes.

Q. I am talking now about the program of getting money to sell fish to the public generally.

A. Well, when I——

Q. Was there? A. Yes.

Q. Was that the purpose of the meeting, Mr. Kibre?

A. No, but I pointed out that that was the fundamental objective of the union. That is why I was so anxious to settle the strike.

Q. Was that the purpose of the meeting, Mr. Kibre?

A. The purpose of the meeting was to attempt to bring about an immediate end of the difficulties there in San Pedro.

(Testimony of Jeff Kibre.)

Q. It is a fact, is it not, Mr. Kibre, that the purpose of the meeting was to discuss contract Exhibit 3 previously served upon all of the dealers in the southern area who had not signed the contract, is that correct?

A. That was not the purpose of the meeting; no.

Q. Did you have any discussion at this meeting on June 10th at all about contract Exhibit 3?

A. I don't recall very much discussion about Exhibit [2744] 3; no.

Q. In any event, after these meetings that you testified you had with the dealers at San Pedro on June 10 and June 11, it is a fact, is it not, that the dealers notified Local 36 on June 14 that they could not go along with the proposal submitted by the union, is that correct?

* * *

The Witness: Yes, but I would like to explain that because—— [2745]

* * *

Q. Now referring to Defendant's Exhibit C, Mr. Kibre, I noted in that exhibit——

* * *

Q. I notice that that exhibit states that "It is suggested that the fishermen resume fishing and offer their catch to the markets, the price to be set by open, aboveboard, fair bargaining." Do you find that in the letter?

A. Yes. [2746]

* * *

(Testimony of Jeff Kibre.)

Q. Was the proposal or the suggestion made in this exhibit submitted to the meeting of June 15, if you know?

A. All that I recall is that the letter as a whole was read to the membership. You see, I think this letter was received just prior to the meeting, but I am sure that there was some discussion about this letter and I roughly recall that when this particular sentence was read there was a big horse laugh from those present.

Q. I see. So I take it from the horse laugh that was given to the suggestion that there was no further suggestion or discussion of that proposal at the meeting of June 15, is that correct?

A. Well, as a matter of fact, they didn't feel that it was a proposal.

Q. So it is a fact then that there was no discussion of that particular suggestion by either you or the membership at [2747] the meeting of June 15, is that correct?

* * *

The Witness: There was discussion of this letter as a whole because the letter as a whole had repudiated——

Q. (By Mr. Dixon): The letter speaks for itself. I am just asking a question, Mr. Kibre.

A. I don't think that the fishermen present there picked out any particular sentence. They were concerned with the letter as a whole. [2748]

* * *

(Testimony of Jeff Kibre.)

Q. Now it is a fact that at the time this proposal was submitted that the markets and the dealers who had not signed Exhibit 3 were being picketed by members and non-members of Local 36, is that correct?

A. You mean at the time that this letter was sent to the union?

Q. Yes, at the time of the meeting of June 15.

A. As far as I know, there were a couple of pickets marching up and down in front of the docks there, that is, on the wharf side.

Q. And it is a fact, is it not, Mr. Kibre, that on June 15 the clearance card system of Local 36 was still in effect, is that correct?

A. As far as I know. I wasn't acquainted with the actual mechanics of the local at that time.

Q. Didn't you commend the various motions that were made at this meeting of June 15 as being one of the means of putting the maximum pressure on the dealers?

A. I simply commended the set-up as a whole and particularly certain organizational steps that were taken that were designed, not in connection with the strike but were [2749] designed to improve the set-up of the union as a whole on a long range basis.

Q. And it is a fact, is it not, that you made the comment at this meeting of June 15th that the action taken at the meeting of June 15th would put the maximum pressure on the dealers?

(Testimony of Jeff Kibre.)

The Witness: Yes. I recall making such a statement. I recall the reasons and the particular circumstances that gave rise to that statement. It was to this effect: That because of the albacore run the local made provision that everybody was fishing.

* * *

Q. (By Mr. Dixon): It is a fact, is it not, Mr. Kibre, that non-members of Local 36 were required to picket the non-signing dealers?

A. I wouldn't know about that.

Q. You say you don't know anything about that?

A. I wouldn't know about that.

Q. Do you know whether that particular matter was discussed at the meeting of June 15th?

A. I was sort of in and out of the meeting at several stages answering telephone calls. I know there were a great many members there, fishermen there, who were not members of the union. I know several of them stood up when they were asked.

Q. Do you know whether they were ones who had filed applications for membership after the strike had been called?

A. I wouldn't know. I am not concerned with the details of the operation of the local.

Q. You mentioned in your direct examination that during the month of June albacore, I believe, started to run, is that correct? [2752]

A. Yes.

Q. Do you know whether any of the non-signing dealers were able to purchase any of that albacore during the period of the strike and picketing?

(Testimony of Jeff Kibre.)

A. Albacore is sold customarily to the canneries.

* * *

Q. (By Mr. Dixon): Do you know?

A. I don't know whether any of the non-signing dealers bought any or not.

Q. I see. It is a fact, is it not, Mr. Kibre, that the picketing of the non-signing dealers continued through the month of June, isn't it?

A. Yes, sir, a couple of pickets were parading out there, I think, throughout the entire month of June.

Q. That was true in Newport, as well as San Pedro, was it?

A. I don't know about the situation in Newport to a great extent.

Q. I will ask you to refer to Exhibit W-1 and ask you if you ever saw that particular document before.

A. Yes, I did. [2753]

* * *

The Court: Did you participate in its preparation?

The Witness: Yes, I did. If I am not mistaken I think I wrote it myself.

Mr. Dixon: We now offer Government's Exhibit 37 in evidence.

Mr. Kenny: I think that is the exhibit the government withdrew once.

The Court: Yes, I think I remember this.

Mr. Dixon: We now offer it in evidence, your Honor.

The Court: Let me see W-1 now.

(Testimony of Jeff Kibre.)

Mr. Andersen: We objected before on the ground, that W-1 was not attached to it, your Honor; then we introduced W-1.

Mr. Margolis: Now that W-1 is in evidence we have no [2754] objection. We wanted the whole thing in, that is all we were interested in.

The Court: It is admitted.

(The document referred to was marked Government's Exhibit 37, and was received in evidence.)

The Court: W-1 is——

Mr. Dixon: That is the letter.

Mr. Andersen: It is the letter Mr. Naylor testified about.

The Witness: W-1 is the letter that was sent to the San Pedro dealers. That is the letter that I prepared.

The Court: 37 is in evidence. I suppose the record will straighten itself out as to whether this was the enclosure referred to therein.

Mr. Margolis: If it doesn't, we will see that it is straightened out.

Mr. Rubin: We can settle that right now. Will you stipulate that is the enclosure?

Mr. Margolis: Yes.

Mr. Rubin: That straightens the record out.

The Court: Very well. The jury will take it as an accepted fact that the exhibit W-1 was the enclosure.

Mr. Rubin: Copy of the enclosure.

(Testimony of Jeff Kibre.)

The Court: A copy of the enclosure that accompanied Government's Exhibit 37. [2755]

Mr. Rubin: Less the resolution which is referred to in Exhibit W-1 and which is not in evidence, and which has been excluded by your Honor.

The Court: Plus nothing.

Mr. Rubin: Less.

The Court: I thought you said plus something.

Mr. Rubin: There was an enclosure to W-1, and the enclosure to W-1 is not in evidence, but W-1 as a letter is an enclosure to No. 37.

Mr. Andersen: They undoubtedly have the original letter that was attached to 37.

Mr. Rubin: We do not, Mr. Andersen, I am sorry. But we will stipulate that is a copy of it.

The Court: Let's go ahead.

Mr. Dixon: I would like at this time to read from Exhibit 37 to the jury.

(Whereupon counsel read from Exhibit 37 to the jury.)

Mr. Dixon: That is all, your Honor.

The Court: Redirect?

Mr. Margolis: Yes, your Honor. [2756]

Redirect Examination

By Mr. Margolis:

Q. Mr. Kibre, on cross-examination there was some discussion concerning the reason or the reasons why the owners or part owners of the large boats, the purse seiners and similar vessels, were

(Testimony of Jeff Kibre.)

not admitted into Local 33, whereas the owners of the small boats were admitted into Local 36. Would you please at this time give a complete statement of the reasons?

Mr. Dixon: If the Court please, I object to that question as calling for a speech, so to speak, on the part of the witness. I think he can amplify, if necessary, what the answer was on cross-examination if it needs amplification.

The Court: Yes, I think that is pretty much of a shotgun question.

Mr. Margolis: This was opened on cross for the first time.

The Court: I know, but you can formalize it and be a little more specific.

Q. (By Mr. Margolis): State what the reasons were or are.

A. Yes. I will try and be as brief and factual as possible.

With regard to the small boat fishermen, they make their entire earnings, or substantially all of their earnings, out [2757] of their share as working fishermen. Their investment in the boat, or in a boat, when they buy a vessel their investment in that boat, that is, the small boat fishermen, is primarily an investment in a boat for the purpose of using the boat for its use value.

Mr. Dixon: Now, if the Court please, I submit that the witness is doing precisely what I expected he would do, and I object to the answer and move that it be stricken.

(Testimony of Jeff Kibre.)

The Court: Yes. The answer is starting out purely in the nature of argument.

I didn't know that the matter was left unclear on cross examination.

Mr. Dixon: It wasn't, your Honor.

The Court: It seemed to me that that question was clear. The witness then stated the reason large boats were not taken into the union, was that usually they had some kind of an affinity to the cannery, either through financing or something else.

* * *

Q. Mr. Kibre, in response to a question by Mr. Dixon on cross examination, on page 2695, with regard to who were [2760] members of the International, you said they may be fishermen, they may be shore workers, they may be employed in a fish house, they may be employed in a fish cannery. Now do all fishermen work on boats?

A. No.

Q. What is the situation with regard to some fishermen?

A. We have quite a few fishermen that don't work on boats.

Q. Where do they work?

A. They work right on shore, they work on beaches. For example, the famous horse seines operated in the mouth of the Columbia River, where there is a sand bar and the fishermen work on the sand bar and a seine is dragged through the water by horses.

(Testimony of Jeff Kibre.)

Also in Newport Beach, for example, there are seines worked right on the beach to catch smelt, and these are operated by tractors.

Right up above Santa Barbara we have beach seines also. They are operated on the surface in a similar manner, either by sheer muscle on the part of the men themselves or by the utilization of tractors or other forms of power. There are quite a few members that don't work on boats. In fact, that was the primitive form of fishing, was fishing right on the beach. [2761]

* * *

Q. No, Mr. Kibre, on cross examination you were asked some questions about the Southern California small boat price conference, which was held on June 11, 1944, and the minutes of which are in evidence as Defendants' Exhibit L. What did you have to say at that meeting with regard to taking united action to establish a sound foundation for uniform prices of fish sold by members represented or present at that conference? [2762]

* * *

The Witness: Yes. I gave quite a lengthy talk and I stated that this meeting had been called by me pursuant to a program laid down by our International union at its December, 1943 convention. That program called for the promotion and stimulation of group bargaining on the part of small boat fishermen, and this position as taken by our International union at the 1943 convention, in turn, went back to the McColloch decision of January

(Testimony of Jeff Kibre.)

15, 1943. That as a consequence of that decision our union had embarked on a program of developing group bargaining among the small boat fishermen, and I stated to the fishermen, those here at this convention, on that occasion, that pursuant to that program embarked upon by the International union that we wanted to see the fishermen in Southern California, the small boat fleet in Southern California, establish the kind of organizational setup which would make it possible for them to engage in sound group bargaining for fresh market fish—— [2764]

* * *

I think it was at the point where I was pointing out to the delegates to this conference that in order to provide a sound basis, a sound foundation for group bargaining for fresh market fish in Southern California it was necessary that they organize all of the market fishermen and small boat fishermen in the Southern California area, since that was an integrated whole, and it was that that I urged them to do.

There are certain ambiguous portions here that I wanted to explain, in addition.

* * *

The Court: You may make your explanation.

The Witness: In this very first sentence, "Brother Kibre explained that the meeting had been called in line with the program to work out a coast-wise schedule of minimum prices," the use of the term "coast-wise" by me referred to the area

(Testimony of Jeff Kibre.)

in Southern California roughly from Santa Barbara to San Diego. That was the usage of the word "coast-wise," and I wanted to explain that, that that was the area which was in question, and not the entire Pacific Coast; and that, secondly, on the basis of group bargaining programs in the various areas with reference to, for example, encouraging development of quality control, and such, that these suggestions from each area would be combined into a coast-wise program in the entire west coast relating to quality control, size, standards for fish, and so forth and so forth.

Those are some of the ambiguities that I wanted to explain. [2767]

* * *

The Witness: There was just one other portion of these minutes which I can't make head nor tail of as they are reported here, but I recall what I did tell the conference, and that is on the second page under point 3, barracuda.

The minutes say something about "the 1942 price, the base generally used by the OPA in fixing prices can not be used as the final determination of either a minimum or a maximum."

What I told the conference there, I explained the basis upon which OPA was operating in so far as fixing ceilings on fish prices, that is, at the producer level. I explained that what the OPA was doing was using the weighted average of all 1942 prices for a particular species, and that that thereupon became the ceiling which the OPA was using.

(Testimony of Jeff Kibre.)

I also explained that in most operations, particularly in the canning industry, that that was an equitable basis in so far as the actual method utilized, since there was a stable price in 1942 and therefore the average was, in effect, the stable price remaining throughout the year, and an average in that sense would be a fair base to be used as a ceiling.

But in connection with barracuda, the price fluctuations [2770] were extremely severe, from lows of around 2 cents and 3 cents a pound up to highs of about 25 cents or 27 cents a pound, and that the method used by the OPA of using the average, the weighted average, of the prices applied for all landings did not square with the actual meaning of the stabilization program, or the price control act. That is what I was pointing out, that if OPA was to be consistent in applying the formulas utilized in other sections of industry they would have to take an average of the highs only. That is what I was really pointing out with regard to this session.

Mr. Margolis: I have a document here which I would like to have marked as Defendants' exhibit for identification next in order.

The Clerk: Z.

(The documents referred to were marked Defendants' Exhibit Z for identification.)

Q. (By Mr. Margolis): Mr. Kibre, in your testimony with regard to the contracts which are in evidence as Government's Exhibits 240 and 244, be-

(Testimony of Jeff Kibre.)

ing the contracts entered into with the two Santa Monica dealers, you stated that there was a written release and satisfaction executed as part of that settlement in exchange for certain moneys which were paid over to the group of fishermen, is that right? A. That is correct. [2771]

Q. Now will you look at the documents which have been marked Defendants' Exhibit Z for identification and state what that document is?

A. This is the release which was signed in connection with the proceedings against Jack Delucca of Santa Monica Seafood Company. [2772]

Q. Was a similar release signed on behalf of the other dealer? A. It was.

Q. What was his name?

A. His name was Curly Polkinghorn, and the firm name, as I recall, was the Bay Fish Market.

Q. What were the differences between the two releases?

A. The only difference was as to the amount of cash reimbursement that was to be made by the dealer to the fishermen. The release here for Delucca was \$2500, which he paid to the fishermen in settlement of the weight claims; and Curly paid—Polkinghorn paid, as I recall, \$6500.

Q. I notice that there are two lists of fishermen both marked Exhibit A, attached to Defendants' Exhibit Z, for identification; do you know what those are?

A. Yes, these are the lists of the names of the fishermen to authorize me to act in their behalf in

(Testimony of Jeff Kibre.)

filing the actions and in settling the actions. One is the list for Delucca, and the other is the list for Curly Polkinghorn.

Mr. Margolis: If your Honor please, we offer Defendants' Exhibit Z, for identification, in evidence.

* * *

The Court: Objection overruled. Admitted.

(The document referred to was marked Defendants' Exhibit Z, and was received in evidence.)

Q. (By Mr. Margolis): Mr. Kibre, in cross examination in connection with Government's Exhibits 240 and 244, which are the two Santa Monica contracts,—which are identical, are they not, except for the fact that one covers one company and the other another company, is that right?

A. That's right.

Q. In connection with those a certain clause was read to you by Mr. Dixon, and he asked you to explain whether or not this clause prevented non-members—prevented the dealers from purchasing fish from non-members of your organization Local 36, and you answered that the clause provides only that after a fisherman sells his fish and continues to sell his fish that then he shall apply to the union for membership and the union will accept him into membership.

This is the question: what Mr. Dixon read to you was this: "It is further agreed that said fish dealers

(Testimony of Jeff Kibre.)

and processors and the company or companies signatory hereto fully recognize and agree with the doctrine of the 'closed union shop' and will neither employ nor purchase fish from any fisherman not at all times a member in good standing in the union." How do you explain your answer in light of that language?

A. What Mr. Dixon read was only a portion of the [2774] paragraph, of the full clause.

* * *

Q. (By Mr. Margolis): The rest of it reads, does it not,—starting in "not at all times a member in good standing in the union. * * * or that if not members, not in good standing, that they will become members or place themselves in good standing within 10 days thereafter. In the event that after said 10 days' period, the union notifies the fish dealers and processors that any fisherman is not a member, or that if a member is not in good standing, then in any such event the Company will not employ nor purchase fish from such fishermen."

Is that the language that you had reference to in your answer? A. That's right.

Q. At any time did the union ever give notice to either of the two dealers covered by Government's Exhibits [2775] 240 and 244 that they should not purchase fish from any fishermen?

* * *

A. To the best of my knowledge the union in Santa Monica has never given such notice.

The Court: Do you know?

(Testimony of Jeff Kibre.)

The Witness: I am fairly well acquainted with the situation out there, yes.

The Court: Just what people have told you?

The Witness: The local business agent from Santa Monica, and, in fact, the dealers, with whom we have had very friendly relations ever since the contract was entered into. [2776]

* * *

Q. (By Mr. Margolis): At page 2722 of the transcript you were asked whether or not at the time Exhibits 240 and 244 were signed, which was in August of 1944—those are the two contracts we have been talking about—you submitted similar contracts to other dealers in this area, and you testified that they were not similar contracts. Do you have a copy of the type of contract that was submitted?

A. Yes, I located a copy in my file of the contract that was submitted to the other dealers.

Q. You have handed me a document headed "Southern California Fish Stabilization Agreement," is that right? A. That's right.

Q. Incidentally, the agreements which were signed in August of 1944 with the two Santa Monica dealers were submitted to them long before that time, were they not? A. Oh, yes, yes.

Mr. Margolis: I will ask that this document just handed me by the witness be marked Defendants' Exhibit next in order.

The Clerk: AA.

(The document referred to was marked Defendants' Exhibit AA, for identification.)

(Testimony of Jeff Kibre.)

Q. (By Mr. Margolis): Is there anything on Defendants' Exhibit AA which refreshes your recollection as to when that was submitted to the dealers?

A. Yes, the "1944" used in the caption of the contract, and then this note which I myself placed on there when it went into my file.

Q. You got this from your personal file, is that right?

A. That is correct.

Q. And you made the note on top?

A. Yes.

Q. Which says what?

A. "Preliminary agreement submitted to dealers June 10, 1944, and discussed at subsequent negotiations."

Q. And this is the agreement which you had reference to in answering Mr. Dixon when you said a different agreement, not a similar agreement, to the one submitted to the Santa Monica dealers was submitted to the other dealers, is that right?

A. That is right.

Q. And was this agreement actually submitted to the other dealers or was it actually discussed in negotiations?

A. Yes, that was submitted at the time of the two meetings when Conciliator Livingston was present. This is [2778] the contract that was under discussion at that meeting.

Mr. Margolis: If your Honor please, at this time we offer Defendants' Exhibit AA in evidence.

(Testimony of Jeff Kibre.)

Mr. Dixon: No objection.

The Court: Admitted.

(The document referred to was received in evidence and marked Defendants' Exhibit AA.)

Mr. Margolis: Ladies and gentlemen of the jury, this document, which has just been admitted in evidence as Defendants' Exhibit AA, is headed "Southern California Fish Stabilization Agreement," and reads as follows:

(At this point counsel read Defendants' Exhibit AA to the jury.)

Q. (By Mr. Margolis): Now this agreement was never signed, is that right?

A. That is correct.

Q. By any dealer? A. No.

Q. And no master agreement such as is referred to there was ever negotiated, is that right?

A. That is right.

Q. Now on cross examination references was had to Defendants' Exhibit O and the statement made in that letter, which is a letter of June 5, 1944, addressed to all Southern California fish dealers, asking that they meet with you and [2779] concerning which letter you have previously testified.

You were asked about the meaning of the words "stabilizing the industry." Will you explain what you mean by the words "stabilizing the industry" as used in Defendants' Exhibit O?

A. Yes.

(Testimony of Jeff Kibre.)

Mr. Dixon: If the Court please, I think that question is objected to on the ground it is immaterial.

The Court: Objection sustained.

Mr. Margolis: Your Honor please, I would like to direct your Honor's attention to pages 2723 and 2724 in which the witness tried to explain his answer, where the precise question was asked and the Court said, "The witness will be given ample opportunity to explain any position that you deem needs explanation upon redirect examination," and I am asking the precise question which counsel asked on cross.

The Court: He is given that opportunity if it is material. You say it is on what page?

Mr. Margolis: Page 2723. The Witness was asked whether stabilization meant a particular thing, and he said, "That is not the complete meaning of stabilization as we used the term."

The Court: Very well. Let me read it.

Where is the letter that was referred to?

Mr. Margolis: I have it here, your Honor.

(The document referred to was passed to the Court.)

The Court: Let me hear the question.

(The question referred to was read by the reporter as follows:

("Q. Now on cross examination reference was had to Defendants' Exhibit O and the state-

(Testimony of Jeff Kibre.)

ment made in that letter, which is a letter of June 5, 1944, addressed to all Southern California fish dealers, asking that they meet with you and concerning which letter you have previously testified.

“You were asked about the meaning of the words ‘stabilizing the industry.’ Will you explain what you mean by the words ‘stabilizing the industry’ as used in Defendants’ Exhibit O?”)

The Court: I find “stabilized prices and conditions,” “stabilization program.”

Mr. Margolis: I followed the language of the Government’s question, your Honor, which appears at lines 11 and 12 of page 2723.

The Court: Yes, I have seen it.

It seems to me as though the exhibit pretty well speaks for itself. It says, “Many other critical problems, long unsolved.” It is entirely in evidence, is it not?

Mr. Margolis: Yes, your Honor.

The Court: It also states, “In particular, efforts must be made to provide a basis for volume handling of fresh fish, [2781] instead of the customary low poundage operation. Additional facilities are required. Quality, from fisherman to consumer, must be improved. Distribution methods must be modernized and expanded. Funds must be provided for a program of sales promotion.”

(Testimony of Jeff Kibre.)

Mr. Margolis: He was asked what he meant by "stabilizing the industry" and one factor was given. He said he meant a lot of other things and I think he should have a right to say what they are.

The Court: Yes, I think so.

Your answer before is:

"A. That is not the complete meaning of stabilization as we used the term.

"Q. Well, that is one of the meanings, isn't it?

"A. That is one of the meanings, yes.

"Q. There may be others, but at least that is one of them?

"A. There are several other very important factors involved in what we mean by stabilization."

Now your question is, what are those factors?

Mr. Margolis: That is right.

The Court: All right. Objection overruled.

The Witness: The letter of June 5, 1944, indicates very briefly what we proposed when we urged the dealers to join with us in a stabilization program. [2782]

The Court: Are those the other factors? Are they set forth in the letter?

The Witness: Some of the other factors are set forth; yes, your Honor.

Q. (By Mr. Margolis): Are there any additional ones?

A. I was just rereading it to refresh my memory.

Mr. Dixon: If the Court please, I don't think it is proper for this witness to read from some other document. He has been asked a question as to what

(Testimony of Jeff Kibre.)

is meant by stabilization, of what the other meanings of stabilization are, as I recall the question, and he now seeks to refer to some documents to refresh his recollection as to what he thinks stabilization is.

Mr. Margolis: Don't look at the documents, and tell us what you mean by stabilization.

The Court: Counsel, you may return the document to the witness.

Mr. Margolis: We would like to ask him to explain it without reference to the document.

The Court: Just a moment. The question on page 2723 is:

"Q. In the letters which we circularized by Local 36 in June 1944 to all the Southern California fish dealers set forth in your Exhibit O, you state that one of the purposes [2783] was to stabilize the fresh fish industry, is that correct?"

So it is the letter that he is talking about and the letter that he wants to explain, and he says that there are several other very important factors other than price. What are the other important factors?

The Witness: I wanted to confine myself to the letter, as a matter of fact, because I could have answered the general meeting very easily.

The Court: Let's go on.

The Witness: Yes. The points that are made in this letter, a basis for volume handling of fresh fish, that meant to develop a regular fishing fleet which would be available to fish all year 'round and harvest the fish as it was ready for harvest.

(Testimony of Jeff Kibre.)

Additional facilities meant additional facilities for the boats so that they could be properly taken care of in San Pedro.

And facilities which would make it possible to materially increase the volume of fish handled in San Pedro, so that all of the fish could be harvested rather than only a small portion of it as had been customary.

Also what we meant at that time and suggest in the letter was to try to develop a system of quality control, starting with the actual delivery of the harvested fish to the dealer, quality control standards, and then maintain those quality [2784] control standards through the dealer establishments, and finally to the consumer.

And, above all, of course it is suggested here a program of sales promotion to materially widen the market for fish, and several other additional factors which are not included here but implied here, for example—— [2785]

* * *

(At this point a motion picture entitled "The Record of a Typical Market Fishing Trip" was exhibited to the Court.)

Mr. Andersen: We offer that in evidence, your Honor. [2792]

* * *

The Court: * * * On the mater of the offer of proof, I have gone through it and on page 2—well, there are a number of things set forth in here

(Testimony of Jeff Kibre.)

that have already been put in evidence. On page 2, for example, in Southern California it is very common for the price of barracuda offered to fishermen to fluctuate from 5 cents a pound in the morning to 1 cent a [2795] pound in the afternoon. I think there has been some testimony to that effect already.

And over on page 17—

Mr. Margolis: Does your Honor want me to interrupt and comment on this?

The Court: I think that evidence is in.

Mr. Margolis: We wanted to show through books, your Honor, that that was a common situation, and the only way we can show it accurately is through records.

The Court: You say you offer to prove that through the testimony of Jeff Kibre.

Mr. Margolis: What page is that, your Honor?

The Court: 2.

Mr. Rubin: I think counsel is referring to page 17.

Mr. Margolis: This deals with the position of the situation prior to unionization.

The Court: Yes, I understand that. But I think that is already in. And there is considerable testimony referred to in here about the original organization of the union in 1886, and Alaska, and so forth. That is already in. But in any event, that would not be the ground for ruling upon this.

One thing on page 17 and 18 I am not quite clear. You say on page 17, line 21, a paragraph starting with the arabic numeral 2: "Through witnesses from

(Testimony of Jeff Kibre.)

the following named companies” and you name them, and the text then jumps over to line 2 on page 18, “Below is a table setting forth purchases from the areas and for the periods indicated in [2797] said table:”

Do you mean through witnesses from those companies you expect to show what is in the table?

Mr. Margolis: That’s right, your Honor; through witnesses including their books.

* * *

The Court: I just wanted to have it made clear. It wasn’t made clear by this statement.

Exhibits D, H-1, -2, -3, -4; I-1, -2, -3; and K, M and P—I don’t recall offhand what they are.

Mr. Margolis: What we have done, in order to have the record entirely clear, your Honor, is to take all of the exhibits which your Honor has rejected and made them a part of our offer of proof.

Your Honor, we are not making any contention that your Honor has not passed upon these matters. It is precisely that your Honor has passed upon them that we are making our offer of proof.

Mr. Rubin: Exhibit D, if your Honor desires to be refreshed, is a letter, I believe, by the Assistant Attorney [2798] General to the firm of Arnold & Fortes; and the “H” series has to do with some publications of the Bureau of Fisheries, I believe, on some statistical information that was put in for identification, and one of the witnesses was examined, I think Mr. Tendick was examined concerning some of the material on the “H” series.







